ANNUAL AND FINAL REPORTS

OF THE

Mineral Land Commissioner

FOR THE

STATE OF MONTANA.

For the Two Years Ending March 4, 1895.

INDEPENDENT PUBLISHING COMPANY
HELENA, MONTANA.
1895.

ANNUAL REPORT

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Mineral Land Commissioner

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For the Year Ending November 30, 1893.

INDEPENDENT PUBLISHING COMPANY
HELENA, MONTANA,
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Office of Mineral Land Commissioner,
Butte, Mont., Nov. 30, 1893.

To His Excellency, John E. Rickards,
Governor of Montana.

Sir:—

In compliance with the requirements of the law, I have the honor to hand you a report of the Mineral Land Commissioner of the State of Montana, for the year ending November 30, 1893.

Respectfully submitted,
GEO. W. IRVIN, Commissioner.

ERRATA.

Page 5, last line, first paragraph, should read "contention," instead of "condition."

Page 52, last line, fourth paragraph, should read "and the government."

Page 59, fourth paragraph, thirteenth line, should read "still had hopes."

Page 62, second line, should read "Secretary of the Interior suspend action."

Page 67, third line, should read "to some would."

Page 94, first line, seventh paragraph, should read "at a conference with opponents."

Page 101, last paragraph, eleventh line, should read "throughout the world."

ANNUAL REPORT

—OF THE—

Mineral Land Commissioner.

Butte, Mont., Nov. 30, 1893.

To His Excellency John E. Rickards,
Governor of Montana.

Sir—At this time it is proper to lay before you the exact status of the controversy between the United States and the State of Montana on the one side and the Northern Pacific Railway Company on the other, over the mineral lands lying within the boundaries of the territory granted by the United States to the Northern Pacific Railway Company to aid the construction of its road.

As is well known, congress, in 1864, granted to the Northern Pacific Railroad Company a charter to construct a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast. It was given a right of way and the right to use material for construction from the public lands, and in addition thereto a grant of every odd numbered section of land for 40 miles on each side of its line, and an additional grant of lieu lands of 10 miles on each side of its track. It is not so well known, however, that in 1870 an act was passed by congress entitled "A resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and for other purposes," which, among other things, granted a further indemnity of 10 miles on each side of the track, adjoining the first indemnity limits, the whole making a tract of country through Montana affacted thereby 120 miles wide and approximately 780 miles long, the last being the distance that the Northern Pacific traverses the State of Montana.

The act of congress giving to the railroad company these lands expressly excluded all mineral lands from the grant, the term "mineral" not to include iron or coal. The Northern Pacific Company has found a convenient plan to claim these mineral lands, and a circuit court, which seems to the lay mind to have been profound in technicality and lacking in common sense, has evolved some decisions in its favor.

Four years ago the Northern Pacific Company began, through its agents and attorneys, an aggressive campaign to capture all of the mineral lands on the said odd-numbered sections, claiming that every piece or parcel of land so situated not known to be mineral at the time of the first definite location of its route through Montana in 1872, or its last definite location in 1882 (the railroad company does not seem to know which), belonged to it.

When this condition of affairs became known to the people of Montana it created a profound sensation throughout the State, and our citizens commenced to organize for their own protection. It was believed that if the Northern Pacific Company, through technical construction of the law or otherwise, was permitted to obtain possession of lands not granted to them, it would acquire what might ultimately be worth many times the value of what was intended to be its original endowment, its franchises, and its completed and equipped lines. To prevent, if possible, this flagrant injustice a State Mineral Land Association was organized, which went vigorously to work and by its able and energetic efforts was enabled temporarily to nullify the acts of the railroad company, being upheld in Washington by the honorables, the Secretary of the Interior and the Commissioner of Public Lands. The officers of the association being men of affairs and having their own private interests to look after, the Legislative Assembly of Montana, at its second regular session, provided for a temporary State bureau to have the matter in charge, with Hon. Martin Maginnis as commissioner thereof. His incumbency was from March 4th, 1891, to March 4th, 1893. Prior to his assuming the duties of his office a case had been tried involving the legal aspect of the claim of the railroad company to these lands, in a contest involving a quartz lode mining claim near the city of Helena, wherein the railroad company was plaintiff and Richard P. Barden et al. were defendants. This was decided adversely to the defendants by Sawyer, circuit judge; Knowles, district judge, dissenting.

During his term of office, at the expense of the State, the commissioner had an appeal of this case to the supreme court of the United States perfected. It came on for hearing at Washington, D. C., in February last. Eminent counsel was employed on behalf of this state, and the Northern Pacific Company was ably represented. The argument lasted several days, and the case was submitted. After deliberation the supreme court, apparently deeming the case of great importance, announced that it declined to decide it, owing to the absence at the trial of one of the associate justices, and ordered that it be reheard on October 16th, of this year, before a full bench.

Effort was also made to obtain favorable congressional action. A bill had been introduced in the Fifty-first congress by Hon. Thomas H. Carter, looking to the proper determination of the matter; but being a subject upon which Congress was so poorly informed the bill failed to become a law. In the Fifty-first Congress Senator Sanders also tried to obtain action in this behalf, introducing a bill therefor in the Senate. Finally, the Secretary of the Interior, the Commissioner of Public Lands and the Senators and Congressmen of Idaho and Montana, consulting with our commissioner, pretty generally agreed upon a bill, which was introduced by Hon. W. W. Dixon in the United States House of Representatives on March 2nd, 1892. The bill provided for the examination and classification of all lands within the Northern Pacific land grant in Montana and Idaho, with special reference to the mineral or non-mineral character of such lands, and to reject, cancel and disallow any and all claims for filing theretofore made or which might thereafter be made by or for the Northern Pacific Company on any lands in said States, which, upon examination, should be classified as mineral lands. It also provided for the appointment of commissioners to make the classification, and provided that no patent should issue to the Northern Pacific Company for any land in Montana or Idaho until the examination and classification should have been made in accordance with the provisions of the bill. It seemed impossible, in the time available, to get a hearing for this measure and it also failed to become a law.

On the 8th day of March of this year I qualified as State Mineral Land Commissioner, and took up the work as I found it. I proceeded to Washington immediately, and at once obtained interviews with the honorables the Secretary of the Interior, the Attorney General and the Commissioner of the General Land Office. The Secretary of the Interior readily promised that no patents should issue to the Northern Pacific Company upon any of their selections in Montana, pending the action of Congress in the premises and the judicial determination of the questions involved. At the office of the Commissioner of Public Lands I have had maps made, showing, with some detail, the magnitude of the Northern Pacific grant, in this way better illustrating to the government the condition of the people of the State.

The Attorney General, at my request, made an examination of the questions involved in the case of the Northern Pacific Company versus Richard P. Barden et al., and after due deliberation expressed himself as believing the interests of the government very considerably involved. After several conversations relative to the matter, he referred the whole subject to the Hon. Lawrence A. Maxwell, Solicitor General of the United States. This gentleman has been carefully studying the briefs heretofore filed in the Barden case and examining the law with reference thereto, and I think he is now well equipped to take the lead in the conduct of the government's part of the case.

Hon. W. W. Dixon has been employed to represent the State of Montana. He is familiar with every act of Congress relative to the Northern Pacific land grant, as well as every mining enactment of that body. He understands their judicial applications to the questions involved, and his age, experience and great learning enable him to comprehend with perspicuous exactness their construction in spirit and in law. Hon. Charles S. Hartman, our present member of Congress, has volunteered his services as counsel for Barden et al., and has been entered of record as such.

With these preparations, on the 16th day of last October we were present and ready for a hearing in the supreme court. As expected, it was announced that this case could not be then heard because of a vacancy in the bench, and that it would remain in its present status until a full bench was secured. By reason of the death of Associate Justice Blatchford there is a vacancy in that court, and has been for some time. Upon the convening of the recent extra session of Congress the President nominated to the Senate for the position the Hon. William H. Hornblower, of New York, whose confirmation lagged through the entire 30 days and then failed of action. The President will probably immediately send the same or another name to the Senate, and a prompt confirmation is likely. The Solicitor General will have the case heard as soon thereafter as possible, giving time for all parties interested to be present.

In the Senate, Senator T C. Power, and in the House, Congressman C. S. Hartman, have introduced bills for the classification and segregation of the mineral lands within the Northern Pacific land grant, practically the same in substance as the bill introduced in the Fifty-second Congress by Hon. W. W. Dixon. These billls have been referred to the Interior Department for examination and recommendation. The Commissioner of Public Lands suggested to the committee on public lands of the respective houses of Congress but one amendment, and that was approved by the Secretary. It simply provides that the law be made applicable to all land grants to railroads. In this the delegations from Montana and Idaho concur. Mr. Hartman will offer another amendment providing that the parties may institute proceedings and contest each other's rights before the local land officers, in the manner now provided by law in mining and agricultural cases.

The chairman of the House committee on public lands (McRae) has assured us that he will be at our service in pushing forward this or any other enactment we may desire in reference to this matter.

If the supreme court decide the Barden case in favor of the people we shall want the legislation now asked for with as little alteration as possible; but if on the contrary, the decision be against us, it will be necessary to modify our demands and possibly make the best terms practicable with the railroad company and the government. Therefore, it has been thought best not to push our present bills in Congress until we ascertain the result of the decision of the supreme court.

While so much that is important to the material interests of the people of the State of Montana is dependent upon the view taken by the supreme court, it is impossible to feel very cheerful as to the future of the great question involved.

Very respectfully,

GEO. W. IRVIN,

State Mineral Land Commissioner.

Opinion of the Supreme Court of the United States in the Case of

RICHARD P. BARDEN, ET AL.

VS.

THE NORTHERN PACIFIC RAILROAD COMPANY.

"Washington, June 1, 1894.—following is the full text of the decision of the supreme court in the case of Barden et al. vs. the Northern Pacific Railroad company:

Supreme Court of the United States. No. 612.—October Term, 1893.

"Richard P. Barden, William Muth, James R. Boyce and Ada F. Boyce, plaintiffs in error, vs. the Northern Pacific Railroad Company.

"In error to the circuit court of the United States for the district of Montana.

Statement of the Case.

"This was an action for the possession of certain parcels of land containing veins or lodes of rock in place bearing gold, silver and other precious metals, situated within section 27, of township 10 north, range 4 west of the principal meridian of Montana, claimed by the Northern Pacific Railroad company—the plaintiff below, the defendant in error here—as parts of the land granted to it by the act of Congress of July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," and the acts and resolutions supplementary and amendatory thereof. (13 Stat., c. 217, p. 365.).

"By its first section the plaintiff was incorporated and authorized to construct and maintain a continuous railroad and telegraph line, with the appurtenances, from a point on Lake Superior, in the State of Minnesota or Wisconsin, and thence westerly by the most eligible route as should be determined by the company, within the territory of the United States, on a line north of the fifty-fifth degree of latitude, to some point on Puget Sound, with a branch by the valley of the Columbia river to a point at or near Portland, in the State of Oregon. The company was invested with all the powers, privileges and immunities necessary to carry into effect the purposes of the act.

"By the third section a grant of land, other than mineral, was made to the company in words of present conveyance to aid in the construction of the railroad and telegraph line and for other purposes. Its language is: "That there be, and hereby is, granted to the Northern Pacific Railroad company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of 20 alternate sections per mile on each side of said railroad line, as said company may adopt, through the territories of the United States, and 10 alternate sections of land per mile on each side of said railroad whenever it passes through any state, and whenever on the line thereof the United States have full title, not reserved, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and whenever prior to said time any of said sections or parts of sections shall have been granted, sold, reserved or occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than 10 miles beyond the limits of said alternate sections.' The grant thus made is accompanied with certain conditions or provisos—these among others: 'That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied or unappropriated agricultural lands in odd numbered sections, nearest to the line of said road, may be selected, as above provided; and that the word mineral, when it occurs in this act,, shall not be held to include iron or coal.'

"By the fourth section it was enacted: 'That whenever said Northern Pacific Railroad company shall have 25 consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that 25 consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States; and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to and coterminous with said completed section of said road; and from time to time, whenever 25 additional consecutive miles shall have been constructed, completed and in readiness, as aforesaid, and certified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of lands as aforesaid; and so on as fast as every 25 miles of said road is completed as aforesaid.'

"By the sixth section is was enacted: "That the President of the United States shall cause the lands to be surveyed for 40 miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled An act to secure homesteads to actual settlers on the public domain, approved May 20, 1862, shall be, and the same are hereby, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company; and the reserved alternate sections shall not be sold by the government at a price less than $2.50 per acre, when offered for sale.'

"The complaint alleges that the general route of the railroad extending through Montana was fixed February 21, 1872, and the lands in controversy were within 40 miles of such general route, and were public lands not reserved, sold, granted or otherwise appropriated, and were free from pre-emption or other claims or rights; that thereafter, July 6, 1882, the line of the road extending opposite and past the described lands was definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office, and that the demanded parcels were within 40 miles of the line thus definitely fixed; that thereafter the plaintiff constructed and completed that portion of its railroad and telegraph line extending over and along the line of definite location; that thereafter the President of the United States appointed three commissioners to examine the same, and they reported to him that that portion of the railroad and telegraph line had been completed in a good, substantial and workmanlike manner, in all respects, as required by the act of July 2, 1864, and the act supplementary thereto and amendatory thereof; that the President accepted the line as thus constructed and completed; that at the time of filing the plat of definite location in the office of the Commissioner of the General Land Office, namely, July 6, 1882, the describel land was not known as mineral land, and was more valuable for grazing than for mining purposes; that in 1868 all the lands in township 10 north, of range 4 west, were duly surveyed, and the township plat was, September 9, 1868, filed in the United States district land office for the district of Helena, Mont., that being the district in which said township is situated, and by that survey the land of the township was ascertained and determined to be agricultural and not mineral, and that determination and report have continually remained in force; that after the completion of the railroad the plaintiff listed the section, including the lands described, and other lands, as portions of the grant, and on November 8, 1868, filed the list in the district land office at Helena, and paid the fees allowed by law; that the list was accepted and approved by the receiver and register and certified to the Commissioner of the General Land office, and has since remained in the same district land office and in the office of the commissioner; that at the time of the acceptance, approval and allowance of the list, and at all times prior thereto, no part of the land was known mineral land, or was of greater value for mining purposes than for grazing, agricultural or townsite purposes; that during the year 1888 certain veins or lodes of rock in place bearing gold and silver and other precious metals were discovered on said described land; and thereafter William B. Wells, William Muth, Harpin Davies and Richard P. Barden, citizens of the United States, without the consent and against the will of the plaintiff, entered upon said

land and made locations of said veins and lodes upon certain lots thereof, as follows, to-wit: The Vanderbilt quartz lode mining claim on lot 68, August 10, 1888; the Four Jacks and the New York Central and Hudson River quartz lode mining claim on lots 72, 74 and 75 respectively, May 9, 1889, and the Chauncey M. Depew quartz lode mining claim on lot 73—all of said lots being within section 27, township 10 north, range 4 west; that the defendants are in possession of said lots, claiming under said locations, through mesne conveyances from the locators, and have been and are extracting ore therefrom, and that the same are mineral lands.

"And the complaint further alleges that the United States have failed, neglected and refused to issue to the plaintiffs a patent for said land, though all acts required by law to entitle plaintiff to a patent have been fully performed; that the title to the premises has vested in the plaintiff under and by virtue of the acts of congress and its compliance therewith; that the lots designated are of the value of over $6,000, and that the value of the ore wrongfully extracted and taken from them by the defendants is over $100.

"Wherefore the plaintiff prays judgment against the defendants for the recovery of the possession of the said lots, for the value of the ore so extracted and for costs.

"To this complaint thhe defendants demurred on the ground that it did not state facts sufficient to constitute a cause of action, and entitled the plaintiff to the relief prayed. The demurrer was argued before the circuit judge and the district judge holding the circuit court of the Ninth circuit, at Helena, in the State of Montana, and they differed in opinion upon the demurrer, the circuit judge holding that it was insufficient and should be overruled, and the district judge dissenting therefrom. Judgment was accordingly entered overruling the demurrer, and the defendants were allowed 10 days within which to answer the complaint. But they came into court and stated that they would abide by their demurrer, and declined to file an answer; whereupon their default was entered, and on application of the plaintiff's attorney it was ordered that judgment be entered against them for the recovery of the possession of the lots designated, the value of the ore taken therefrom, and costs of suit, which was accordingly done. To the ruling of the court in overruling the demurrer exception was taken by the defendants; and to reverse the judgment they have brought the case to this court on writ of error.

"Mr. Justice Field, after stating the case, delivered the opinion of the court.

"This action is brought for the possession of certain parcels or lots of mineral land claimed by the plaintiff below—the defendant in error here—as embraced in the grant of the United States of July 2, 1864. The facts constituting the claim of the plaintiff are set forth at length in the complaint, and to their sufficiency the defendants demurred as not constituting a cause of action or entitling the plaintiff to the relief prayed. The lots are there conceded to be mineral lands, and the grant of the government applies in terms only to lands other than mineral.

"To remove any doubt of the intention of the government to confine its concession to lands of that character, the grant is accompanied with a proviso declaring that all mineral lands are excluded from its operations. And as if to cut off every possible suggestion from any ingenious and strained construction that mineral lands might be reached under the legislation giving vast tracts of public lands to state and private corporations, under the pretense of aiding public improvements, a joint resolution was passed by Con-

gress in January of the following year declaring 'that no act passed in the first session of the Thirty-eighth Congress (that being the year 1864) granting lands to states and corporations to aid in the construction of roads, or for other purposes, or to extend the time of grants heretofore made, shall be so construed as to embrace mineral lands, which in all cases shall be and are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant.' (13 Stat., 567.) This provision should be borne in mind when the statement is made as it is, that there has been no reservation of mines or minerals to the government.

"No part of the contemplated road or telegraph line of the Northern Pacific Railroad Company had at the passage of this joint resolution been constructed or commenced, and on the authority of the case of that company vs. Traill county (115 U. S., 600) its provisions are to be deemed an amendment of the original act, and as operative as if originally incorporated therein.

"The action being for the possession of lands conceded to be mineral, under the act of Congress of July 2, 1864,it would seem that the simple reading of the granting clause and its proviso and the joint resolution mentioned would be a sufficient answer to the complaint, and a sufficient reason to sustain the demurrer without further consideration. But the plaintiff's counsel appear to find in the fact which they allege, that the lands were not known to be mineral at the time the plaintiff, by the definite location of the line of its road, was able to identify the section granted, a sufficient ground to avoid the limitations of the grant and the prohibitions of the proviso and joint resolution.

"The grant was of 20 alternate sections of land, designated by odd numbers, on each side of the road which the plaintiff was authorized to construct—a tract of 2,000 miles in length and 40 miles in width, constituting a territory of 80,000 square miles. It is true that the grant was a float, and the location of the sections in no respect affected the nature of the lands or the conditions on which the grant was made. If swamp lands, or timber lands, or mineral lands previously, they continue so afterward.

"It is also true that the grant was one in praesenti of lands to be afterward located. From the immense territory from which the sections were to be taken it could not be known where they would fall until the line of the road was established; then the grant attached to them, subject to certain specified exceptions; that is the sections or parts of sections, which had been previously granted, sold, reserved, occupied by homestead settlers, or pre-empted or otherwise disposed of, were excepted, and the title of its other sections or parts of sections attached as of the date of the grant so as to cut off intervening claimants. In that sense the grant was a present one. But it was still, as such grant, subject to the exception of mineral lands made at its date or then excluded therefrom by conditions annexed. Whatever the location of the sections, and whatever the exceptions then arising, there remained that original exception declared in the creation of the grant. The location of the sections and the exceptions from other causes in no respect affected that one, or limited its operation. There is no language in the act from which an inference to that effect can be drawn, in the face of its declaration that all mineral lands are thereby 'excluded from its operations,' and of the joint resolution of 1865 that 'no act of the Thirty-eighth Congress (that is, of the previous session of 1864), granting lands to states or corporations, to aid in the construction of roads or for other purposes, shall be so construed as to embrace mineral lands.' The plaintiff, however, appears to labor under the persuasion that only those mineral lands were excepted from the grant which

were known to be such on the identification of the granted sections by the definite location of the proposed road and the ascertainment at that time of the exceptions from them of parcels of land previously disposed of; and that the want of such knowledge operated in some way to eliminate the reservation made by Congress of the mineral lands. But how the absence of such knowledge on the ascertainment of the sections granted and the parcels of land embraced therein previously disposed of, had the effect or could have the effect to eliminate the reservation of mineral lands from the act of Congress, we are unable to comprehend. Such a conclusion can only arise from an impression that a grant of land cannot be made without carrying the minerals therein; and yet the reverse is the experience of every day. The granting of lands either by the government or individuals, with a reservation of certain quarries therein, as of marble, or granite, or slate, or of certain mines, as of copper, or lead, or iron found therein, is not an uncommon proceeding, and the knowledge or want of knowledge at the time by the grantee in such cases, of the property reserved in no respect affects the transfer to him of the title to it. No one will affirm that want of such knowledge on the identification of the land granted, containing the reserved quarries or mines would vacate the reservation, and we are unable to perceive any more reason from that cause for eliminating the reservation of minerals in the present case from the grant of the government than for eliminating for a like cause the reservation of quarries or mines in the cases supposed. And it will hardly be pretended that Congress has not the power to grant portions of the public land with a reservation of any severable products thereof, whether minerals or quarries contained therein, and whether known or unknown; yet such must be the contention of the plaintiff or its conclusion will fall to the ground. The cases cited in support of the claim of the plaintiff only show that the identification of the sections granted and of the exceptions therefrom of parcels of land previously disposed of, leaves the title of the remaining sections or parts thereof, to attach as of the date of the grant, but has absolutely no other effect. Such is the purport, and the sole purport, of the cases of the St. Paul & Pacific Railroad Company vs. Northern Pacific Company (139 U. S., 105), and Deseret Salt Company vs. Tarpey (142 U. S., 241, 247), cited by the plaintiff. In both of those cases the writer of this opinion had the honor to write the opinion of this court; and it was never asserted or pretended that they decided anything whatever respecting the mineral, but only that the title of the lands granted took effect, with certain designated exceptions, as of the date of the grant. They never decided anything else. And what was that title? It was of the lands which at the time of the grant were not reserved as minerals, and of the lands which at the time of the location had not been sold, reserved, or to which a pre-emption or homestead right had not attached. If one were to sell land in the country, reserving therefrom the minerals of gold or silver found therein, and tell the purchaser to take surveyor and measure off the land, would it be urged or pretended that the moment the surveyor ascertained the boundaries of the land sold the reservation of the minerals would be eliminated? Would any one uphold the reasoning of the doctrine which would assert such a conclusion? And can any one see the difference between the case now before us and the case supposed? Not a word was said or suggested in the cases cited about the exception or elimination of minerals; and not only in the cases cited by the plaintiff, but in a multitude of other cases, almost without number, the same silence was observed. In none of

them was it ever pretended that the ascertainment of the location of the lands granted eliminated the reservation contained in the grant. The grant did not exist without the exception of minerals therefrom, and Congress has declared, in positive terms, that the act shall never be construed to embrace them, and there is nothing in any of the cases cited in the plaintiff's contention which indicates in the slightest degree that the original exception of the minerals was in any respect qualified.

"It seems to us as plain as language can make it that the intention of Congress was to exclude from the grant actual mineral lands, whether known or unknown, and not merely such as were at the time known to be mineral. After the plaintiff had complied with all the conditions of the grant, performed every duty respecting it, and among other things that of definitely fixing the line of route, its grant is still limited to odd sections which were not mineral at the time of the grant, and also to those which were not reserved, sold, granted or otherwise appropriated, and were free from preemption and other claims and rights at the time the line of the road was definitely fixed, and was coupled with the condition that all mineral lands were excluded from its operation. There is, in our judgment, a fundamental mistake made by the plaintiff in consideration of the grant. Mineral lands were not conveyed, but by the grant itself and the subsequent resolution of Congress cited were specifically reserved to the United States and excepted from the operations of the grant. Therefore they were not to be located at all, and if located they could not pass under the grant. Mineral lands being absolutely reserved from the inception of the grant, Congress further provided that at the time of the location of the road other lands should be excepted, viz.: those previously sold, reserved or to which a homestead or preemption right attached.

"It is difficult to perceive the principle upon which the term known is sought to be inserted in the act of Congress, either to limit the extent of its grant or the extent of its mineral, though its purpose is apparent. It is to add to the convenience of the grantee and enhance the value of its grant. But to change the meaning of the act is not in the power of the plaintiff; and to insert by construction what is expressly excluded is in terms prohibited. Besides the impossibility, according to recognized rules of construction, of incorporating in a statute a new term—one inconsistent with its express declarations—there are many reasons for holding that the omission of the word 'known' as defining the extent of the mineral lands excluded, was purposely intended.

"The grant to the railroad company was, as we have already mentioned, 2,000 miles in length and 40 miles in width, making an area of 80,000 square miles, a territory nearly equal in extent to that of Ohio and New York combined. This territory was known to embrace in its hills and mountains great quantities of minerals of various kinds, and among others those of gold and silver. It was sparsely inhabited and in many districts a large extent was entirely unoccupied. The policy of Congress is expressed in its numerous grants of public lands to aid in the construction of railroads has always been to exclude the mineral lands from them, and reserve them for special disposition, as seen in the following acts among others: Act of July 1, 1862 (12 Stat., 489), and of July 2, 1864 (13 Stat., 356), making grants to the Union and Central Pacific companies; act of July 4, 1866 (14 Stat., 83), making a grant to the Iron Mountain Railroad Company; act of July 13, 1866 (14 Stat., 94), making a grant to the Placerville, etc., railroad; act of July 25, 1866 (14 Stat.,

239), making a grant to the California & Oregon railroad, sections 2 and 10; act of July 27, 1866 (14 Stat., 292), making a grant to the Atlantic & Pacific railroad and to the Southern Pacific railroad; act of July 2, 1867 (14 Stat., 548), making a grant to the Stockton & Copperopolis railroad; act of March 3, 1871 (16 Stat., 573), making a grant to the Texas Pacific railroad. In all of these cases, and in all grants of public lands in aid of railroads, minerals (except iron and coal) have uniformly been reserved, and in no instance has such a grant been held to pass them. Patents issued after an examination and determination of the facts by the government whether portions of the lands embraced in such grants did or did not contain minerals have been held as conclusive in subsequent controversies, and of this we shall speak more fully hereafter; but grants in aid of railroads (and we speak of no other grants) before such determination and issue of a patent have never been held to pass the minerals.

"When the act was passed making the grant to the plaintiff, it would have been impossible to state with any accuracy what parts of the tract contained minerals and what did not. That fact could only be ascertained only after extensive and careful explorations, and it is not reasonable to suppose that Congress would have left that important fact dependent upon the simple designation by the plaintiff of the line of its road, and the possible disclosures of minerals by the way, instead of leaving it to future and special explorations for their discovery. To suppose that Congress intended any such limitation would be to impute to it a desire that its exclusion of minerals from the grant should be defeated, which it is impossible to admit. It is conceded that in the interpretation of statutes like the one before us, reference may be had, not only to the physical condition of the country and surroundings, but that its political conditions and necessities may also be considered. The tract granted covered a belt believed to be rich in minerals, and the United States were at the time engaged in a terrific conflict for the preservation of the Union, incurring an immense debt, exceeding two thousand millions, and many of their citizens engaged in the struggle looked forward hopefully and confidently to this source of relief to the burdened treasury. And we cannot with reason suppose that, under the circumstances, the United States intended that the control of this source of wealth and relief should be taken from them. It passes belief that they could have deliberately designed in this hour of sore distress and fearful pressure upon their finances to give away to a corporation of their own creation not only an imperial domain in land but the boundless wealth that lay buried in a mineral region of 80,000 square miles. They knew that the mineral belt over which the proposed railroad was to pass was almost entirely unexplored. They, therefore, retained from their grant the mineral lands, whether known or unknown, and left the discovery of their minerals to future explorations, and their disposition to future legislation. We can never admit that at the time and under the circumstances upon which the grant was made, Congress intended that its clear words of exclusion of minerals should be interpreted to mean the exact reverse—that when it declared that 'no act of Congress granting lands in aid of railroads' passed during the session of 1864 (the session at which the grant under consideration was made) should 'be construed to embrace minerals,' it meant that such act might be so construed. Never has it yet fallen to Congress to deceive by its legislation and juggle in this way.

"To incorporate the word 'known' into the act and add it to the description of the mineral excepted would also contravene a settled rule in the con-

struction of grants like the one before us, that nothing will pass to the grantee by implication or inference, unless essential to the use and enjoyment of the thing granted, and that exceptions intended for the benefit of the public are to be maintained and liberally construed. As justly observed by counsel for the defendant in their very able brief, 'the reservation in the grant of mineral lands was intended to keep them under government control for the public good, in the development of the mineral resources of the country, and the benefit and protection of the miner and explorer, instead of compelling him to litigate or capitulate with a stupendous corporation and ultimately succumb to such terms, subject to such conditions and amenable to such servitudes as it might see proper to impose. The government has exhibited its beneficence in reference to its mineral lands as it has in the disposition of its agricultural lands, where the claims and rights of the settlers are fully protected. The privilege of exploring for mineral lands was in full force at the time of the location of the definite line of the road, and was a right reserved and excepted out of the grant at that time.

"Some weight is sought to be given by counsel of the plaintiff to the allegation that the lands in controversy are included in the section which was surveyed in 1868 and a plat thereof filed by the surveyor in the local land office in September of that year, from which it is ascertained that the character of the land was ascertained and determined, and reported to be agricultural and not mineral. But the conclusive answer to such alleged determination and report is that the matters to which they relate were not left to the Surveyor General. Neither he nor any of his subordinates was authorized to determine finally the character of any lands granted, or make any binding report thereon. Information of the character of all lands surveyed is acquired of surveying officers, so far as knowledge respecting them is obtained in the course of their duties, but they are not clothed with authority to specially examine as to these matters outside of their other duties, or determine them, nor does their report have any binding force. It is simply an addition made to the general information obtained from different sources on the subject. In Cole vs. Markley (two decisions of the Department of the Interior relating to public lands, 847-849), Mr. Teller, when Secretary of the Interior, in a communication to the Commissioner of the General Land Office, speaks at large of the notations of surveyors, and says: 'Public and official information was the object of these notations, with a view to preventing entry until the facts are finally determined. They should be, and they are, only prima facie evidence, and subject to rebuttal by satisfactory proof of the real character of the land. The determination of the character of the land granted by Congress, in any case, whether agricultural or mineral, or swamp or timber land, is placed in the officers of the land department, whose action is subject to the revision of the Commissioner of the General Land Office, and on appeal from him by the Secretary of the Interior. Under their direction and supervision the actual character of the land may be determined and fully established. The effect of a patent issued by them under the authority of Congress, as to such matters, we shall presently consider. In the present case the mineral character of the lands in controversy is conceded. They are alleged in the complaint to be mineral lands containing gold and silver and other precious metals.

"Nor is there any force in the averments that in November, 1868, the plaintiff listed the section embracing the mineral lands in controversy, with other sections, as portions of its grant, and filed the lists in the local land

office at Helena and paid the receiver's fees for filing the same; and that the register and receiver accepted, allowed and approved the list and certified the same to the Commissioner of the General Land Office, and that no part of the fees has ever been refunded. The act of Congress does not provide that selections of the lands by the plaintiff, as a part of its grant, shall in any respect change its purport and effect and eliminate any of its reservations; nor does it empower the officers of the local land office to accept the list as conclusive with respect to such grant in any particular. There was, therefore, no obligation on the part of any one to refund to the plaintiff the fees paid on filing the list mentioned, when an attempt is made to do away with its supposed effect.

"There is, in our opinion, no merit in any of the positions advanced by the plaintiff in support of its claim to the mineral lands in controversy. The language of the grant to the plaintiff is free from ambiguity. The exclusion from its operation of all mineral lands is entirely clear, and if there was any doubt respecting it, the established rule of construction applicable to statutes making such grants would compel a construction favorable to the grantor.

"Some reference should be made here to the language used in the cases of Deffeback vs. Hawke (15 U. S., 399), and Davis vs. Weibold (139 U. S., 507), as it is contended that it is in conflict with the views expressed in the present case. If so, the writer of this opinion, who was also the writer of the opinions in both of the cases cited, must take the responsibility of any conflict of the views now expressed. It is more important that the court should be right upon later and more elaborate consideration of the cases than consistent with previous declarations. Those doectrines only will eventually stand which bear the strictest examination and the test of experience.

"The case of Deffeback vs. Hawke arose in this wise: The plaintiff asserted title to mineral lands under a patent of the United States, founded upon an entry under the laws of Congress, for the sale of mineral lands. The defendant, not having the legal title, claimed a better right to the premises by virtue of a previous occupation of them by his grantor as a lot on a portion of the public lands appropriated and used as a townsite—that is, settled upon for purposes of trade and business, and not for agriculture, and laid out into streets, lots, blocks and alleys for that purpose. And it was held by this court that no title from the United States to land known at the time of sale to be valuable for its minerals, of gold, silver, cinnabar or copper could be obtained under the pre-emption or homestead laws, or the townsite laws, or in any other way as prescribed by the laws specially authorizing the sale of such lands. These three cases, those under the pre-emption and homestead laws and townsite act, were classed together. It was found that under the pre-emption and homestead act, lands containing known saline deposits and mines could not be purchased. In the townsite act it was provided that by virtue of its provisions no title could be acquired to any mine of gold, silver, cinnabar or copper, or to any valid mining claim or possession held under existing laws. And under the mineral act of Congress it was provided that in all cases lands valuable for minerals should be reserved from sale, except as otherwise expressly provided. The court held that under those acts, lands could be purchased which were not known to be mineral; and from this the inference was drawn that only lands known at the time of the sale to be valuable for minerals could be excluded, and if they were not thus known to be valuable for minerals, a sale might be had. This was not a case arising upon a grant like the one under consideration at present; but inasmuch as the law of Congress authorized lands valuable for minerals to be sold gen-

erally under the mineral act, and excluded from sale mineral lands when claimed for homesteads or pre-emption or for townsites, it was thought that these conflicting provisions of the law would be reconciled by simply excluding from the sale lands known at the time to be mineral. But that case has no bearing upon the present one involving the construction of an act of Congress declaring in express terms that no mineral lands shall be conveyed by the grant made.

"The case of Davis vs. Weibold was an action on the part of a mineral claimant who had obtained a patent in January, 1880, of a parcel of land within the exterior limits of Butte townsite, subsequently to the patent of the townsite.

"When the entry of the townsite was had and the patent issued, and a sale was thereafter made to the defendant of the lots held by him, it was not known—at least it does not appear that it was known—that there was any valuable mineral lands within the townsite, and the question was whether in the absence of this knowledge the defendant, who claimed under the townsite patent, could be deprived by the laws of the United States of the premises purchased and occupied by him, because of a subsequent discovery of minerals in them, and the issue of a patent to the discoverer under whom the plaintiff claimed. The court said that the declaration that no title could be acquired under the provisions relating to such townsites and the sale of the lands therein to any mine of gold, silver, cinnabar or copper or to any valid mining claim or possession held under existing laws, would seem on first impression to constitute a reservation of such mines in the land sold, and of mining claims on them, to the United States; but such was held not to be the necessary meaning of the terms used; in strictness they imported only that the provisions by which the title to the land in such townsite was transferred should not be the means of passing a title also to mines of gold, silver, cinnabar or copper in the land, or to valid mining claims or possessions thereon; but that they were to be read in connection with the cause protecting existing rights to mineral veins; and with the qualification uniformly accompanying exceptions in acts of Congress of mineral lands from grant or sale. Thus read, the court held that they merely prohibited the passage of title under the provisions of the townsite law to mines of gold, silver, cinnabar or copper, which were known to exist on the issue of townsite patent an to mining claims and mining possessions, in respect to which such proceedings had been taken under the law or the custom of miners, as to render them valid, creating a property right in the holder, and not to prohibit the acquisition for all time of mines which then lay buried unknown in the depths of the earth. The patent for the townsite was therefore held to cover minerals subsequently discovered in the lands patented. The patent was in law a declaration that minerals did not exist in the premises when it was issued, and the subsequent acquisition of minerals in the townsite was within the specific authorization of the act of Congress that all valuable minerals should be open for all exploration and sale. These facts make a marked distinction between that case and the case before the court, although it is conceded that some of the language used is broader than the necessities of the case require. Yet the effect given to the townsite patent in that case will be found not inconsistent with the views hereafter expressed in the present case.

"Some effect is also sought to be given to the fact that Congress authorized the Northern Pacific Railroad Company to place a mortgage upon its

entire property. Admitting that such is the fact, the conclusion claimed does not follow. Congress thereby only authorized a mortgage upon the property granted to the company, which was the lands without minerals. The mortgage could not cover more than the property granted. So also it is said that the states and territories through which the road passes would not be able to tax the property of the company unless they could tax the whole property, minerals as well as lands. We do not see why not. The authority to tax the property granted to the company did not give authority to tax the minerals, which were not granted. The property could be appraised without including any consideration of the minerals. The value of the property excluding the minerals could be as well estimated as its value including them. The property could be taxed for its value to the extent of the title which is of the land.

"The grant under consideration is one of a public nature. It covers an immense domain, greater in extent than the area of some of our largest states, and it must be strictly construed. It would seem from the frequency with which we have announced this doctrine that it should be forever closed against further question, but as the most extravagant pretensions are made in the plaintiff's construction of the present grant, we will venture to refer to one or two of the important judicial declarations on that subject.

"The general rule, when grants relate to matters of public interest, is thus forcibly expressed by Chief Justice Taney: 'The object and the end of all government,' said the Chief Justice, speaking for the court, 'is to promote the happiness and prosperity of the community by which it is established; and it can never be assumed that the government intended to diminish its power of accomplishing the end for which it was created. * * * The continued existence of a government would be of no great value, if by implications and presumptions it was disarmed of the power necessary to accomplish the ends of its creation; and the functions it was desired to perform transferred to the hands of privileged corporations.' (Charles River Bridge Company vs. Warren Bridge Company, 11 Pet., 507.).

"In Leavenworth Railroad Company vs. United States (92 U, S.. 733), this court said: 'The rules which govern the interpretation of legislative grants * * * apply as well to grants of land to states to aid in building railroads as to grants of especial privileges to private corporations. In both cases the legislature, prompted by the supposed wants of the public, confers on others the means of securing an object the accomplishment of which it desires to promote, but declines to undertake * * * If the terms are plain and unambiguous, there can be no difficulty in interpreting them; but if they admit of different meanings, one of extension and one of limitation, they must be accepted in a sense favorable to the grantor.'

"In Winona, etc., vs. Barney (113 U. S., 618), speaking of the construction of legislative grants, the court said: 'They are to receive such a construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the grants were by instruments of private conveyance. To ascertain that intent we must look to the condition of the country when the acts were passed as well as to the purpose declared on their face, and read all parts of them together.

"The earnest contention of the counsel of the plaintiff arises principally, we think, from an unfounded apprehension that our interpretation will lead to uncertainty in the titles of the country. If the exception of the government is not limited to known minerals the title, it is said, may be defeated years after

the land has passed into the hands of the grantee, and improvements of great extent and value have been made upon its faith. It is conceded to be of the utmost importance to the prosperity of the country that titles to land and to minerals in them shall be settled, and not be the subject of constant and ever-recurring disputes and litigation, to the disturbance of individuals and the annoyance of the public. We do not think that any apprehension of disturbance in titles from the views we assert need arise. The law places under the supervision of the Interior Department and its subordinate officers, acting under its direction, the control of all matters affecting the disposition of the public lands of the United States, and the adjustment of private claims to them under the legislation of Congress. It can hear contestants and can decide upon the respective merits of their claims. It can investigate and settle the contentions of all persons with respect to such claims. It can hear evidence upon and determine the character of lands to which different parties assert a right and when the controversy before it is fully considered and ended, it can issue to the rightful claimant the patent provided by law, specifying that the lands are of the character for which a patent is authorized. It can thus determine whether the lands called for are swamp lands, timber lands, agricultural lands, or mineral lands, and so designate them in the patent which it issues. The act of Congress making the grant to the plaintiff provides for the issue of a patent to the grantee for the land claimed, and as the grant excludes mineral lands in the direction for such patent to issue, the land office can examine into the character of the lands and designate it in its conveyance.

"It is the established doctrine, expressed in numerous decisions of this court, that wherever Congress has provided for the disposition of any portion of the public lands, of a particular character, and authorizes the officers of the Land Department to issue a patent for such lands upon the ascertainment of certain facts, that department has jurisdiction to inquire into and determine as to the existence of such facts, and in the absence of fraud, imposition or mistake, its determination is conclusive against collateral attack.

"In Smelting Company vs. Kemp (104 U. S., 651), this court thus spoke of the Land Department in the transfer of public lands: 'The patent of the United States is the conveyance by which the nation passes its title to portions of the public domain. For the transfer of that title the law has made numerous provisions designating the persons who may acquire it and the terms of its acquisition. That the provisions may be properly carried out, the Land Department, as part of the administrative and executive branch of the government, has been created to supervise all the various proceedings taken to obtain the title from their commencement to their close. In the course of their duty the officers of that department are constantly called upon to hear testimony as to matters presented for their consideration and to pass upon its competency, credibility and weight. In that capacity they exercise a judicial function, and therefore it has been held in various instances by this court that their judgment as to matters of fact properly determinable by them is conclusive when brought to their notice in a collateral proceeding. Their judgment in such cases is like that of other special tribunals upon matters within their jurisdiction, unassailable except by a direct proceeding for its correction or annulment. The execution and record of the patent are the final acts of the officers of the government for the transfer of its title, and as they can be lawfully performed only after certain steps have been taken,

that instrument, duly signed, countersigned and sealed, not merely operates to pass the title, but is in the nature of an official declaration by that branch of the government to which the alienation of the public lands under the law is intrusted, that all the requirements preliminary to its issue have been complied with. The presumptions thus attending it are not open to rebuttal in an action at law.'

"In Steele vs. Smelting Company (106 U. S., 450), the language of the court was that: 'The Land Department, as we have repeatedly said, was established to supervise various proceedings whereby a conveyance of the title from the United States to portions of the public domain is obtained, and to see that the requirements of different acts of Congress are fully complied with. Necessarily, therefore, it must consider and pass upon the qualifications of the applicant, the acts he has performed to secure the title, the nature of the land and whether it is of the class which is open to sale. Its judgment upon these matters is that of a special tribunal, and is unassailable except by direct proceedings for its annulment or limitation.'

"In Heath vs. Wallace (135 U. S., 573), it was held that 'the question whether or not lands returned as subject to periodical overflow are swamp and overflowed lands is a question of fact properly determinable by the Land Department.' And Justice Lamar added: 'It is settled by an unbroken line of decisions of this court in land jurisprudence that the decisions of that department upon matters of fact within its jurisdiction are, in the absence of fraud or imposition, conclusive and binding on the courts of the country.' If the Land Department must decide what lands shall not be patented because reserved, sold, granted, or otherwise appropriated, or because not free from pre-emption or other claims or rights at the time the line of the road is definitely fixed, it must also decide whether lands are excepted because they are mineral lands. It has always exercised this jurisdiction in patenting lands which were alleged to be mineral, or in refusing to patent them because the evidence was insufficient to show that they contained minerals in such quantities as to justify the issue of the patent. If, as suggested by counsel, when the Secretary of the Interior has under consideration a list of lands to be patented to the Northern Pacific Railroad Company, it is shown that part of said lands contain minerals of gold and silver, discovered since the company's location of its road opposite thereto, he would not perform his duty, stated in Knight vs. Land Association (143 U. S., 178), as the 'supervising agent of the government to do justice to all claims and preserve the rights of the people of the United States,' by certifying the list until corrected, in accordance with the discoveries made known to the department. He would not otherwise discharge the trust imposed in him in the administration of the law respecting the public domain.

"There are undoubtedly many cases arising before the Land Department in the disposition of public lands where it will be a matter of much difficulty on the part of its officers to ascertain with accuracy whether the lands to be disposed of are to be deemed mineral lands or agricultural lands, and in such cases the rule adopted that they will be considered mineral or agricultural as they are the more valuable in the one class or the other, may be sound The officers will be governed by the knowledge of the lands obtained at the time as to their real character. The determination of the fact by those officers that they are one or the other will be considered as conclusive.

"The case of the Central Pacific Railroad Company vs. Valentine (11 L. D., 238, 246), the late Secretary of the Interior, Mr. Noble, speaks of the

practice of the Land Department in issuing patents to railroad lands. His language is: 'The very fact, if it be true, that the office of the patent is to define and identify the land granted, and to evidence the title which, vested by the act, necessarily implies that there exists jurisdiction in some tribunal to ascertain and determine what lands were subject to the grant and capable of passing thereunder. Now, this jurisdiction is in the Land Department, and it continues, as we have seen, until the lands have been either patented or certified to, or for the use of the railroad company. By reason of this jurisdiction it has been the practice of that department for many years past to refuse to issue patents to railroad companies for lands found to be mineral in character at any time before the date of patent. Moreover, I am informed by the officers in charge of the mineral division of the Land Department that ever since the year 1867 (the date when the division was organized) it has been the uniform practice to allow and maintain mineral locations within the geographical limits of railroad grants, based upon discoveries made at any time before patent or certification where patent is not required. This practice having been uniformly followed and generally accepted for so long a time, there should be, in my judgment, the clearest evidence of error as well as the strongest reasons of policy and justice controlling before a departure from it should be sanctioned. It has, in effect, become a rule of property.'

"It is true that the patent has been issued in many instances without the investigation and consideration which the public interest requires; but if that has been done without fraud, though unadvisedly by officers of the government charged with the duty of supervising and attending to the preparation and issue of such patents, the consequence must be borne by the government until by further legislation a stricter regard to their duties in that respect can be enforced upon them. The fact remains that under the law the duty of determining the character of the lands granted by Congress, and stating it in instruments transferring the title of the government to the grantees, reposes in officers of the Land Department. Until such patent is issued, defining the character of the land granted and showing that it is non-mineral, it will not comply with the act of Congress in which the grant before us was made to plaintiff. The grant, even when all the acts required of the grantees are performed, only passes a title to non-mineral lands; but a patent issued in proper form, upon a judgment rendered after a due examination of the subject by officers of the Land Department, charged with its preparation and issue, that the lands were non-mineral, would, unless set aside and annulled by direct proceedings, estop the government from contending to the contrary, and, as we have already said, in the absence of fraud in the officers of the department would be conclusive in subsequent proceedings respecting the title.

"The delay of the government in issuing a patent to the plaintiff, of which great complaint is made, does not affect the power of the company, to assert, in the meantime, by possessory action (as held in Deseret Salt Company vs. Tarpey, 142 U. S., 241), its right to lands which are non-mineral. But such delay, as well observed, cannot have the effect of entitling it to recover, as it contended in this case, lands which it admits to be mineral. The government cannot be reasonably expected to issue its patent, and it is not authorized to do so, without excepting mineral lands, until it has had an opportunity to have the country, or that part of it for which a patent is sought, sufficiently explored to justify its declaration in the patent, which would be taken as its determination, that no mineral lands exist therein.

"On the other hand, an affirmance of the judgment in this case would enlarge the grant of the government against its oft-repeated exception of mineral lands, and give to the plaintiff the vast mineral wealth of the states through which the grant passes. It would render the plaintiff corporation imperial in its resources—one that would far outshine 'the wealth of Ormus and of Ind.' And, as counsel justly observes, the same rule would apply to all our trans-continental railroads and give to them nearly all of our mineral lands, when Congress has time and again declared that they should have no mineral lands, and that no act of Congress should be construed to give them any; and that they 'in all cases shall be and are reserved exclusively to the United States unless otherwise specially provided in the act or acts making the grant.'

"It is unnecessary to pursue this subject any further. We will only observe that we do not notice the numerous assertions made as to what has been decided by this court, and what is the settled rule in the cases of railroad grants by Congress, the correctness of which assertions we do not admit. The official reports will disclose wherein the errors lie, sufficiently for the attainment of accuracy of statement in matters of judicial decision.

"The plaintiff in this case, not having a patent, and relying solely upon its grant, which gives no title to the minerals within any of its lands, shows by its complaint no cause of action for the possession of the mineral lands claimed. The demurrer of the defendants should have been sustained, and judgment entered thereon in their favor.

"It follows that the judgment of the circuit court in this case must be reversed and the case remanded to that court with instructions to sustain the demurrer of the defendants and enter judgment thereon in their favor with costs. And it is so ordered."

ANNUAL REPORT

OF THE

Mineral Land Commissioner

FOR THE

STATE OF MONTANA.

For the Year Ending November 30, 1894.

INDEPENDENT PUBLISHING COMPANY
HELENA, MONTANA,
1895.

Office of Mineral Land Commissioner,
Butte, Mont., November 30, 1894.

To His Excellency John E. Rickards,
Governor of Montana.

Sir:—

In compliance with the requirements of the law, I have the honor to hand you a report of the Mineral Land Commissioner of the State of Montana, for the year ending November 30, 1894.

Respectfully submitted, GEO. W. IRVIN, Commissioner.

ANNUAL REPORT

OF THE

Mineral Land Commissioner.

Butte, Mont., November 30, 1894.

To His Excellency John E. Rickards,

Governor of Montana.

Sir:—From the time in October, 1893, when it was found that the case of the Northern Pacific Railway Company versus Richard P. Barden et al. was impossible of hearing, for the reason that political complications within the administration prevented a full bench in the supreme court, until the confirmation of Mr. Justice White, is was impossible to make any progress in determining the rights of the people and the United States in the mineral lands within the limits of the Northern Pacific land grant in the State of Montana.

Finally, on the 11th day of April, 1894, before a full bench, our case was taken up and argued and fully heard, the honorable the Solicitor General of the United States, Lawrence J. Maxwell, and Hons. W. W. Dixon and Charles S. Hartman appearing for the defendant and appellant, the State of Montana, and James McNaught and James C. Carter for plaintiff and respondent, the Northern Pacific Railway Company. Our side of the case was ably and exhaustively presented by counsel, eliciting from the court expressions indicating the closest attention and the fullest comprehension; and when it was submitted our friends in attendance upon the hearing felt that the decision was to be with us.

In this we were not mistaken. On the 26th day of May, 1894, the supreme court, through Mr. Justice Field, handed down a decision favorable to our side of the cause, a copy of which is appended hereto. The substance of this opinion, all important to the mining interests of the State of Montana, and, indeed, to all other mining states, is as follows, to-wit:

"That the Northern Pacific Railway Company, under its land grant, acquired no title or right to land valuable for mineral (except coal and iron), and that such lands were expressly excluded from the grant; that the Land Department of the government, under laws now existing or herafter to be enacted, had the power, and it was its duty, to investigate and determine the mineral or other character of the lands within the grant before it issued any patent to the railway company, and that the company had no claim to any land known to be valuable for mineral before patent to it.

"The opinion says that it was never the intention of Congress to grant

any lands valuable for mineral to the railway company; but, on the contrary, the intention was to preserve all such lands for exploration and purchase by citizens of the United States."

Animated by the belief that the way was now cleared for favorable legislative action, Hon. C. S. Hartman and the undersigned undertook to bring up for consideration H. R. 3476, a copy of which is appended hereto and which provided, briefly:

"For the examination and classification of lands within the Northern Pacific Railroad grant by commissioners in each land district of Montana and Idaho through which the road passed; for reports by such commissioners as to what lands within the grant were mineral; for objections and contests against such reports by the railroad company or other persons interested, and for hearings to determine any question in dispute before the Land Department.

"The bill provided for an examination of unsurveyed as well as surveyed lands, and its object was to settle, after as careful examination as practicable, what were mineral and what were non-mineral lands before the issuing of any patents to the railroad company.

This bill was especially intended to provide against the necessity of going to the courts with every dispute that might occur between the people and the railway company within the land grant. It had the endorsement of the Interior Department, as will be seen by reference to the latter, of date August 29th, 1893, from the honorable the Commissioner of the General Land Office, duly endorsed by the honorable the Secretary of the Interior; and it had been passed through the different stages of committee proceedings until, at last, it was upon the calendar for final passage.

Then came the interesting process of getting consideration for the measure. We enlisted the good offices of the Commissioner of the General Land Office and secured from him private personal endorsement. We obtained the active, earnest and honest support of the chairman of the House committee on public lands, Hon. T. C. McRae. The honorable speaker promised us, in the most friendly manner, that we should have consideration. He was emphatic in his endorsement of the measure, and declared that it was a legitimate conclusion of the decision of the supreme court. We were most cordially and fairly treated in the House of Representatives, and have nothing to complain of; but the weary waiting and the disappointing incidents during a period of over a month of endeavor to make progress, were at times most discouraging.

Finally, through the aid of the speaker and Chairman McRae, the long-looked-for opportunity arrived, and on the 24th day of July, 1894, the bill passed the house substantially as introduced. We made haste to have it engrossed and transmitted to the Senate, hoping to advance it as far as possible during the few remaining days of the session. We knew that there was no possibility of its becoming a law, because it was a matter of public knowledge that there was no quorum of the Senate in Washington and only those measures could be enacted that could obtain unanimous consent.

Through the efforts of Senator Power, we obtained immediate consideration of the bill before the sub-committee, consisting of Senator McLaurin, of Mississippi, and Senator Dolph, of Oregon, and a hearing was granted to Representative Hartman (Montana), Representative Sweet (Idaho), Senator Shoup (Idaho), and your commissioner. A favorable majority report was easily obtained; but we sought for several days to adjust matters so that a

unanimous report from the subcommittee might be brought about. In this we failed; and as a result of this hearing and our efforts in conjunction therewith, we became convinced that every possible effort would be made by the Northern Pacific Railway Company to defeat the measure. Mr. Dolph, of Oregon, is clearly a Senator favorable to the company, and is and will be active in promoting their interests. We recognize in him a man of considerable ability and untiring industry, and believe that he is determined to use his best efforts to our injury. He proposed a series of amendments, which would confine the examination by the commissioners to such lands within the grant as were known to be mineral, eliminating from their consideration all lands the mineral character of which might be determined by the fact of their being within a mineral bearing range or because of their proximity to known mines. His amendments provided, among other things, for such modification of section 3 of the bill as would encumber the segregation of unsurveyed tracts within the grant to such an extent as to render the remedy impracticable. The general tendency of all of his propositions were so hostile that it was found impossible to entertain them, and all hope of agreement was necessarily abandoned.

On the 30th day of July, 1894, the Senate committee on public lands was ready to take up and consider the House bill, which had now become, by substitution of Senator Power's bill, Senate bill No. 434, and all parties on the side of Montana were prepared for the hearing, when Senator Pasco called the attention of Senator Power to a letter from the honorable the Commissioner of the General Land Office, of even date, addressed to the said Senator as acting chairman of the Senate committee on the public lands, wherein it was stated that by reason of the decision of the supreme court of the United States in the Barden case (hereinbefore mentioned), and because of certain rules and regulations promulgated by the Interior Department July 9th, 1894, the legislation asked of Congress by the State of Montana was unnecessary; and also recommending that the pending Senate bill (No. 434), which he had before so highly recommended, "be not enacted into law."

The friends of the measure were astounded at this sudden and unheralded change in the position of the Interior Department and proceeded to examine the aforesaid rules, issued twenty days prior, and a copy of which had not been furnished the Senator, Representative or commissioner from Montana. The rules were found to be framed, whether intentionally or not, wholly in the interest of the Northern Pacific Railway Company and entirely inimical to the interests of the people of Montana and the United States government. In view of the friendly attitude up to this time of the honorable Commissioner and the honorable Secretary of the Interior, as expressed in their letters to the Senate committee on public lands of August 29th, 1893, and opinions the very reverse contained in their respective letters to the same committee less than a year later, and of the code of rules and regulations of July 9th, 1894, hostile to all purposes of our bill, and being conscious that the first session of the Fifty-third Congress was dying of physical and mental exhaustion, it was deemed best to ask the committee for a postponement until the second session of said Congress, when we felt that we would be able to meet the new conditions of affairs more advantageously.

The situation, as it was left at this point, is fully elaborated in the correspondence, herein set out at length, to-wit:

The letter from the honorable the Commissioner of the General Land Office to the Senate committee on public lands, dated August 29th, 1893:

Department of the Interior, General Land Office,
Washington, D. C., August 29, 1893.

"Sir:—I have the honor to submit my report, in duplicate, on Senate bill No. 434, first session Fifty-third Congress, entitled 'A bill to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho,' referred to me August 22, 1893.

"The bill proposes a method for the examination and classification of lands, as to their mineral and non-mineral character, which are within the land grant and indemnity limits of the Northern Pacific railroad, as defined by an act of Congress entitled 'An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route,' approved July 2, 1864, and acts supplemental and amendatory thereof (13 Stat., 365; also 16 Stat., 378).

"The provisions of this bill are very nearly identical with those of H. R. bill No. 6831, first session Fifty-second Congress, upon which a report was made by this office to the honorable Secretary on March 26, 1892.

"The principal difference between the bills being that, in this bill provision is made for the appointment of three commissioners in each of the land districts of Bozeman, Helena and Missoula, in the State of Montana, and Coeur d'Alene, in the State of Idaho, whereas said bill No. 6831 provided for the appointment of only three commissioners in both states.

"Upon a careful examination I am satisfied that there is urgent necessity for Congressional legislation in the nature of that embraced by the bill now under consideration.

"In the main I am in accord with the recommendations contained in the report above referred to upon this proposed legislation, and for the purposes of this report I shall, to a very large extent, adopt the former.

"Section 3 of the act granting lands to the Northern Pacific Railroad Company granted every alternate section of public not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile on each side of said railroad line, through the territories of the United States. In addition to the grant made, certain indemnity provisions extended the grant beyond the original limits. The particular region of country covered by the act was under a territorial form of government at the time of its approval. A careful perusal of the act will disclose the fact that three things were required to designate the specific land intended by the grant to pass to the company:

"(1) It was necessary that the company should definitely locate its line of road.

"(2) That the land should be surveyed in order that the alternate sections might be known.

"(3) That the character of the land should in some manner be determined.

"The first requirement the company complied with by definitely locating and constructing its road. The second requirement is being complied with by the extension of the public surveys, but for the third requirement, to-wit, the classification of the land as to its mineral or non-mineral character, no express legislative provision has been made.

"Vast deposits of gold, silver, copper and lead have been discovered within the grant and indemnity limits of said road in the states mentioned

in this bill, and new discoveries of valuable mines are constantly being made therein. I have no doubt that it can be shown from trustworthy authorities that within the region covered by this bill large undeveloped deposits of valuable minerals exist which are of great magnitude and value.

"In the states mentioned, said company has filed selection lists embracing large quantities of land, and the records of this office show that mines have been discovered and developed within the boundaries of many of the tracts of land selected, and that new discoveries on the odd sections are being made from day to day.

"The extent of the grant and the magnitude of the interests involved, and its great importance to the general public, imperatively demand some legislation whereby the lands, which rightfully and lawfully belong to the railroad company within the states named, may be designated, and those lands that are not affected by the grant; although within alternate odd-numbered sections, may be specified.

"As to the quantity of land within the Northern Pacific land grant and indemnity limits, in the states of Montana and Idaho, the quantity surveyed within said grant, the number of acres selected by the company, and the present status of such selections, the following is submitted as an approximate estimate:

	Acres.
Granted in Montana	17,838,080
In ten-mile indemnity limits	4,992,000
Selected by company, now pending	4,336,285
Surveyed within the grant	14,758,720
Granted in Idaho	1,900,800
In ten-mile indemnity limits	576,000
Selected by the company, now pending	122,000
Surveyed within the grant	403,200

"No lands have been patented to the company in either of said states. The selections made by the company of said lands in those states are pending before this office, and the adjustment of them necessarily involves the question of the character of the lands affected by the granting act, which must ultimately be determined by the department.

"The grant to this company within the said states ought to be adjusted with as little delay as a proper regard for the rights and interests of all concerned therein will admit of; but in case the grant is adjusted by patenting to the company such lands withis limits as are not now known to contain mineral, without special examination, it is clear that many tracts will be so transferred that will ultimately be found to contain minerals in paying quantities. It is thought by some who have had opportunity to be well informed that at least one-third of the land within the limits of the grant in said states is mineral in character.

"To me it is very clear that a law should be passed by Congress enabling the Land Department to thoroughly investigate the character of the lands supposed to be mineral and within the reservation of the law, before the railroad company is entitled to patent; and inasmuch as this bill has for its purpose and object a careful examination and a just and intelligent classification of this great body of lands, with reference to their mineral or non-mineral character within the meaning of the granting act by competent officers, and the speedy and equitable determination of the rights of the government and the said company, within the primary and indemnity limits of

the grant in said states, as well as the protection of the public interests in so much of the land affected by the grant as was not intended for the company, I recommend its passage.

"Your predecessor's annual report, dated November 15, 1889, contains the following observations relative to mineral lands in railroad grants, from which I quote so much as is deemed pertinent and appropriate for the purposes of this report:

" 'The question presents itself in regard to the mineral lands lying within the grant of the railroads running through the mineral belts, and which would otherwise than because of their mineral character be included within the railroad grants. The act of Congress absolutely and unqualifiedly reserves all mineral lands from the railroad grants made to the most extended and important railroads of our country, and this reservation affects the claim of such a road as the Northern Pacific to a great part of its land subsidy. It also effects to a very considerable degree the Central and Southern Pacific roads, with some others; and how to determine what are mineral lands at this time when the roads are claiming their grants is indeed a difficult and most important matter. Originally it was left to the company to make affidavit in a form adopted by my predecessors and by them deemed sufficient for a long while, but by which it was not made necessary for the officer taking the oath to swear to his actual knowledge that the land was not mineral.

"Many of the selections made by the railroads under their grants were supported by such affidavit, but upon the same coming before the Commissioner (Sparks) of the General Land Office, he demanded that a further affidavit should be made, the same as required from settlers on homestead claims, whereby actual knowledge of the facts that the same was not mineral land was required to be sworn to. This the railroad companies have failed to do, insisting that their claims made under the regulations at the time existing, are valid and should be allowed. This question is not yet determined, but it is deemed a matter to which your attention should be invited for the purpose of having, if necessary, some further legislation upon the subject. On the one hand it is to be noted that the additional affidavit has been required since the selections were claimed; on the other stands the absolute reservation of the law and the right of the people to enjoy these mineral lands, if such indeed there be among the selections made by the railroads.

"If legislation is not made on this subject the department will have to decide by such light as may be obtained as to the real nature of the lands, whether mineral or not, however difficult the inquiry may be and whatever the responsibility assumed. It is deemed, however, that a law should be passed by Congress enabling the Land Department to thoroughly investigate the character of lands supposed to be mineral and within the reservation of the law before the railroad is entitled to any cession whatever. It would require a considerable appropriation for the purpose of investigation and survey; and connected with this, authority should be given to the Secretary of the Interior to refuse to certify lands to the railroads until there was clear proof that the same was not mineral. The question is most important. It is far reaching in its results and may effect the welfare and independence of many of our citizens. It would not be unreasonable to direct that the patents issued should themselves contain a reservation of any land therein described if it prove upon further development to be actual mineral land.

"The mineral land should be preserved for our people, and there is no

claim on the part of the railroads to obtain these sources of vast wealth not intended for them that should be humored to the least degree beyond the law. This I say in no spirit of hostility to the railroad companies, but from a thorough conviction that the best interests of the republic would be served by dividing this vast mineral wealth among individuals, rather than by allowing it by any means to fall into possession and control of large corporations. It is not intended to be granted to them, and they should not be allowed to obtain it by default. Sufficient means of proving exactly what the character of the lands is should be provided.

"Believing, as I do, that there is urgent necessity for legislation of the kind proposed by this bill, and recommending the enactment of its principal provisions, I deem it proper, however, to suggest for your consideration whether or not the third section thereof embodies definitions of 'mineral lands' materially different from the definitions of those terms found in decisions of the United States supreme court, viz., in Deffeback vs. Hawk (115 U. S., p. 404); United States vs. Mining Company (128 U. S., 683), and in Davis' Administrator vs. Weibold (139 U. S., p. 519), and, if so, whether any amendment of said section is necessary. My purpose in calling attention to this point is to emphasize the importance of so framing that section that in case it should become a law it would be very certain to withstand the severe test of the highest judicial scrutiny to which it will undoubtedly be subjected.

"Your attention is also called to the provision in said third section of the bill, that a single mining claim found within a section of land shall be prima facie evidence that the entire section on which such claim is located shall be considered as mineral land.

"I would suggest an amendment in this particular, so as to make such mining claim prima facie evidence of the mineral character only of the 40-acre tract within which it is situated.

"The magnitude of the interests involved in this proposed legislation renders an appeal to the highest courts of the land more than probable in case it should be enacted, and it would therefore seem necessary to exercise the most thoughtful care in framing its separate sections.

"The foregoing represents my views upon this important bill, and it is submitted in accordance with your request.

"Copy of the bill received is herewith inclosed.

"Very respectfully, S. W. LAMOREAUX,
"Commissioner."

"The Secretary of the Interior."

The letter from the same Commissioner to the same committee, dated July 30th, 1894:

Department of the Interior, General Land Office,
Washington, D. C., July 30, 1894.

"Sir:—I have the honor to acknowledge the receipt, by reference from the department, for report in duplicate and return of papers of a communication from Hon. Samuel Pasco, acting chairman of the Senate committee on public lands, transmitting 'for another or supplemental report' Senate bill No. 434, entitled, 'A bill to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho.'

"The bill provides for the appointment of three commissioners for each of the following land districts: Bozeman, Helena and Missoula, in the State-

of Montana, and Coeur d'Alene, in the State of Idaho, to examine and classify lands, as to their mineral or non-mineral character, within the land grant and indemnity limits of the Northern Pacific railroad, as defined by an act of Congress, entitled 'An act granting lands to aid in the construction of a railroad,' etc., approved July 2, 1864 (13 Stats., 365; also 16 Stats., 378).

"August 29, 1893, I had the honor to submit to the department a report, in duplicate, on this bill recommending, subject to some modifications therein indicated, its enactment. Since said report, the decision of the supreme court in the Barden case, hereinafter cited, has been rendered to the effect that the department has sufficient authority, without further legislation, to make all needful rules and regulations to classify public lands embraced within all grants in which there is a reservation of mineral.

"The communication of the honorable acting chairman of the public lands committee makes reference to the great necessity that exists for some action on the part of the government in this matter, which shall include all of the mineral land states, and raises the question 'whether any legislation is necessary, and if the matter cannot be adjusted by regulations of the Interior Department.'

"I submit herewith a copy of my report of August 29, 1893, and at the same time embody my present views in answer to the questions above referred to.

"The estimated number of acres in the grants to the Pacific railroads in the mineral land states and territories, and the number of acres patented to each, is shown in the following table:

Pacific Railroads in Mineral Land States.	Estimated Area in Grant.	Area Patented.
Atlantic & Pacific—		
Arizona	10,240,000	373,099.38
California	8,384,000	.....
New Mexico	11,520,000	335,424.09
Central Pacific—		
Nevada		420,483.92
Utah	7,997,600	404,392.96
California		489,042.78
C. & O., California	3,724,800	1,790,260.90
W. P., California	1,100,000	450,297.43
O. & C., Oregon	3,840,000	1,668,045.01
Northern Pacific—		
Dakota	11,520,000	2,675,760.41
Montana	17,838,080	.....
Idaho	1,900,800	.....
Oregon	3,575,680	422.75
Washington	11,258,880	716,172.36
Southern Pacific—		
California	11,964,160	*2,228,604.85
		**368,085.90
Union Pacific—		
Colorado	700,000	640.00
Denver Pacific, Colorado	100,000	209,349.25
Wyoming	4,600,000	79,682.03
Utah	1,100,000	40,196.49
Total	112,364,000	12,249,960.55

*Main. **Branch.

"It has been estimated by the best authority obtainable that one-third of the lands within the railroad grants in the twelve mineral states and territories is mineral land. Accepting the above estimate as a basis, over 30,000,000

acres of mineral land are within such railroad grants, and developments are constantly proving that these lands are the great store houses of large deposits of the precious metals.

"The questions submitted, which will be answered in detail, are as follows:

"(1) Whether, if any legislation is required, it should not be general embracing all the states and territories in which there are railroad grants?

"In reply to this question, I would answer yes. Most of the grants mentioned on page 3 contain more or less mineral, and there would seem to be no good reason for excepting any state or territory containing mineral from such legislation.

"By the terms of their grants mineral lands, except coal and iron, are excepted from the operations of all said grants, and any action taken in this matter should apply equally to all of such railroads in said mineral land states and territories, and to the various state grants as well.

"(2) Whether any legislation is necessary, and if the matter cannot be adjusted by regulations of the Interior Department.

"I am of the opinion that no legislation can be had that will satisfactorily meet all the conditions arising in the adjustment of these grants. Taking the present bill as a basis, and applying its provisions to all of said states and territories, it would require the appointment of commissioners for at least twenty land districts. This would require sixty commissioners, with the necessary additional help, to examine and determine the character of 30,000,000 acres of land. The time, labor and expense necessary to complete an examination of these lands is a matter of mere conjecture, but taking into account the vast area involved, this expense could not but be enormous. I do not think that the proposed commission could satisfactorily accomplish the purpose for which it would be created.

"The files of the General Land Office contain a vast amount of matter touching upon the mineral character of the public lands, consisting of mineral entries, mineral applications, affidavits and protests concerning specific tracts and localities, together with the returns of the various deputy surveyors by whom the public surveys are made. Pending lists of selections are all examined in connection with these records.

"The work of a commission under this bill at best would be but superficial. To examine thoroughly into the character of each smallest legal subdivision of the 30,000,000 acres involved, to publish lists thereof and to take testimony relative thereto, would take years of time, and would entail expense no one can estimate, an expense which should not be charged to the United States.

"It is a fair proposition that the beneficaries under the various grants should pay the expense incident to the patenting of their lands.

"The department from its records can, better than any commission, determine the amount and quality of proof necessary to be submitted, and can do this at a very moderate cost to the government.

"The regulations of the department in the matter are much simpler and more effective, and are more likely to accomplish the evident intent of the law. The recent decision of the United States supreme court in the case of Barden vs. the Northern Pacific Railroad Company (154 U. S., p. 288), sustains the position of the department as to the status of mineral lands within railroad grants (11 L. D., 239), and holds that 'under the law the duty of deter-

mining the character of lands granted by Congress and stating it in its instruments transferring the title of the government to the grantee reposes in officers of the Land Department.' (See also 142 U. S., p. 161.)

"The department, in the exercise of its authority, requires notice to be given by publication and posting of all applications to select lands returned as mineral and the submission of satisfactory proof that the land is in fact non-mineral in character. (See circular of July 2, 1894, inclosed.) It has even gone further than that and has required publication and posting for selections of lands in proximity (within six miles) to lands containing mining claims (18 L. D., 477, and departmental instructions of July 9, 1894).

"This would seem to cover satisfactorily all selections falling within what are now well known mineral regions. It is fair to both the corporation and to the government to assume that all lands within six miles of known mines are prima facie mineral, and that lands beyond that distance are prima facie agricultural. This places the burden of proof upon the one denying such presumption. While this rule is an arbitrary one, it is not thought to be oppressive.

"The railroad companies have pending before this office lists of selections approximating 25,000,000 acres of surveyed lands adjoining the constructed portions of their roads, and are, therefore, entitled to receive patent at an early date for such land, if found to be of the character described in the grant. It would be manifestly unjust to delay action indefinitely on said lists of selections simply because of the theory that the lands may at some future time be found to be valuable for mineral.

"Under the regulations of July 2, 1894, and July 9, 1894, ample opportunity is afforded the corporation and the citizen to secure a thorough investigation as to the character of any particular tract of land.

"(3) If legislation is required, the character of the required legislation indicated by amendments to the present bill or by draft of a new bill.

"As hereinbefore stated, the decision of the supreme court in the case of Barden vs. Northern Pacific Railroad Company (154 U. S., 288), finds that the Land Department has full authority and that it is its duty to classify and determine the character of all lands within railroad grants, and I do not think further legislation on this point necessary.

"(4) Whether if the question of the character of such lands is to be left undetermined until patent issues some legislation should be had to hasten examination and quiet title.

"The various lists of selections now pending before this office are being examined and passed upon as rapidly as is thought to be consistent with the interests of all concerned.

" The greater number of mining claims are held and worked by virtue of locations made under section 2622 U. S., revised statutes, the number on which entry is made being relatively small.

"Of these mining claims the department knows nothing, and it frequently happens that lands, to which miners have acquired vested rights, are patented under grants to corporations or to states as agricultural.

"The department could more fully protect the rights of bona fide mineral claimants, and prevent valuable mineral lands from being disposed of under other laws, if section 2324 United States revised statutes, were amended so as to require the mineral claimant, within thirty days after making his loca-

tion, to file in the local land office, for notation and transmittal to the General Land Office, a certified copy of the location certificate thereof; describing the locus of his claim (by section, township and range, when possible), otherwise said location should be void. This amendment should apply as well to locations heretofore made.

"Such a law would place the department in possession of a vast fund of information as to the character or alleged character of the public lands.

"Lands covered by such locations might then be treated as prima facie mineral, and the burden of disproving this presumption would rest upon those applying to take under other laws.

"I recommend the enactment of such an amendment to section 2324, United States revised statutes.

"(5) Whether any recent rules or regulations by the department have been issued on the question.

"The regulations of the department have been named in the answer to the second question submitted, and copies thereof are herewith inclosed.

"(6) The definition of mineral lands as adopted by the department and the courts.

"The definition of mineral lands as adopted by the department and the courts, so far as the disposition of the public lands are concerned is, that lands are mineral when they contain mineral in sufficient quantity and quality to render them more valuable for mining purposes than for agriculture. It must be observed that the question of the character of the land is a question of fact to be determined only upon full proof as to the particular tract involved. As hereinbefore stated coal and iron are not excepted from the grants.

"(7) Any suggestions connected 'with this important and difficult matter.'

"In view of what has already been said, I have no further suggestions to make at this time.

"I have the honor to earnestly recommend that this bill, Senate No. 434, be not enacted into law.

"I return herewith, as directed, the communication of Hon. Samuel Pasco and Senate bill No. 434.

"Very respectfully,
'S. W. LAMOREAUX,
"Commissioner."

"The Secretary of the Interior."

The letter of the Secretary of the Interior, in endorsement thereof, dated July 31st, 1894:

"Department of the Interior,
"Washington, July 31, 1894.

"Sir:—I transmit herewith report from the Commissioner of the General Land Office of Senate bill No. 434, entitled 'A bill to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho,' with the inclosures therein referred to.

"The commissioner in his report answers fully all the questions submitted in your letter of the 20th inst. to the department, and I concur in the conclusion therein reached without making further report thereon.

"Very respectfully,
HOKE SMITH,
"Secretary."

"Hon. Samuel Pasco,
"Acting Chairman Committee on Public Lands, U. S. Senate."

A copy of the rules and regulations issued by the Secretary of the Interior, dated July 9th, 1894, and now in force:

"Department of the Interior,
"Washington, July 9, 1894.

"Sir:—In the matter of the selection by railroad companies of lands in satisfaction of their grants the following rules and regulations will be observed in determining whether the lands selected are mineral or non-mineral lands:

"(1) Where the lands have been returned by the Surveyor General as mineral a hearing may be had to determine the character of the land, under rules 110 and 111 of rules and regulations, issued December 10, 1891, controlling the disposal of mining claims.

(2) Where the lands selected by the company are within a mineral belt, or proximate to any mining claim, the railroad company will be required to file with the local land officers an affidavit by the land agent of the company, which affidavit shall be attached to said list when returned, setting forth in substance that he has caused the lands mentioned to be carefully examined by the agents and employes of the company as to their mineral or agricultural character and that to the best of his knowledge and belief none of the lands returned in said lists are mineral lands.

"Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of six miles from any mineral entry, claim or location, which list shall be transmitted to the department for its approval. If any of the lands embraced in said list of selections are found upon examination to be within a radius of six miles from any mineral entry, claim or location, you will cause a supplemental list of said lands to be prepared, and return the same to the register and receiver of the district in which they are situated, and notify the railroad company that they have beeen so returned.

"The register and receiver will at once cause notice to be published in such newspapers as shall be designated by the Commissioner of the General Land Office, containing a statement that the railroad company has applied for a patent for the lands, designating the same by townships, and has filed lists of the same in the local land office; that said lists are open to the public for inspection; that a copy of the same, by descriptive subdivisions, has been conspicuously posted in said land office for inspection by persons interested and the public generally; and that the local land office will receive protests, or contests, within the next sixty days for any of said tracts or subdivisions of land claimed to be more valuable for mineral than for agricultural purposes.

"At the expiration of said sixty days, the register and receiver will return to the Commissioner of the General Land Office said supplemental list, noting thereon any protests, or contests, or suggestions, as to the mineral character of any of such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said list. After the same shall have been returned by the register and receiver, you will first eliminate from said supplemental list all the lands that have been protested, or contested, or claimed to be more valuable for mineral than for agricultural purposes, or concerning which any suggestion has been made as to their mineral character. The remaining lands you will certify to this department for approval and patenting as agricultural.

"In regard to lands protested or contested, or claimed to be mineral, or concerning which any suggestion has been made or report by the register and receiver as to their mineral character, you will order a hearing to be had by the local land officers in each case, after giving due notice to the persons furnishing such information and to the railroad company, under the existing rules and regulations of the department concerning hearings in cases where the land has been returned as mineral land.

"The railroad company shall pay to the register and receiver the cost of advertising said land in the manner set forth.

"You are further instructed that all lists which have been heretofore prepared in accordance with any rules, regulations, or instructions of the Secretary of the Interior, where such rules have been complied with (such as furnishing affidavits showing the non-mineral character of the lands, in accordance with the instructions of the Interior Department), and such mineral affidavits furnished for each subdivision of forty acres shall be excepted from the terms of the foregoing regulations. Also, where lists of selections are now pending of lands returned by the Surveyor General as mineral, where hearings have been had in accordance with rules 110 and 111 of rules and regulations of December 10, 1891, above referred to, and the local officers have determined that said lands are non-mineral in character, and such determination have been approved by the General Land Office, such lands shall be submitted to the department for approval without further investigation, although they may be within six miles of any mineral claim or location, unless since said hearing mineral claims or locations have been made of any tract embraced in said list, in which event you will eliminate said tract from said list and hold the same for further investigation.

"Very respectfully,

HOKE SMITH,

"Secretary."

"The Commissioner of the General Land Office."

The letter from Congressman Hartman, dated August 1st, 1894, calling upon the honorable Commissioner of the General Land Office to verify his unexpected change of front; and his reply thereto, dated August 2nd, 1894:

August 1, 1894.

"Dear Sir: I have just finished reading your official letted of July 30, giving your views on the Senate bill for the examination and classification of mineral lands in Montana and Idaho.

"This is a copy of the same bill that was introduced in the House by myself, that was favorably reported by the committee, and that passed the House on the 24th of July. It is also the same bill concerning which Mr. Irvin, mineral land commissioner from Montana, and myself held consultation with you on two or three different occasions, the last of which occuring some days after the rendition of the judgment of the supreme court of the United States in the Barden case. It is also the same bill, or copy of the same bill, that you reported favorably as commissioner while the same was pending before the House, and concerning which you kindly wrote to Speaker Crisp a personal letter, asking that consideration might be had of it in the House.

"I understood at all times that you were favorable to this bill, both from your written report and from your conversation concerning it, and, therefore, after consultation with Senator Power and Mr. Irvin, have concluded to

write you this letter, thinking that there must have been some misunderstanding on your part as to the provisions of the bill concerning which you wrote your letter of July 30.

"The only changes that were made in this bill on the floor of the House were simply changes as to the amount of compensation to be received by the commissioners, whose appointment was provided for, and slight limitations regarding the compensation of attorneys appointed to represent the United States, and a reduction of $20,000 in the sum total appropriated by the bill. So that the same principles are involved in this bill, and indeed the same language, with these slight modifications above noted.

"This being the case, my conviction that some misunderstanding or mistake has been made induces me to write you this letter, in the hope that whatever error has occurred may be corrected, for the thought has suggested itself to me that your letter of July 30 might have been prepared by some law clerk or other party in the employ of the department, and that the same had not been submitted to you or met with your approval.

"An early reply will greatly oblige,

"Yours, very truly,

CHAS. S. HARTMAN.

"The Commissioner of the General Land Office,

"Washington, D. C."

"The foregoing letter has been submitted to me and meets with my approval.

"GEO. W. IRVIN,

"Mineral Land Commissioner, State of Montana."

"General Land Office,

"Washington, August 2, 1894.

"Dear Sir:—In reply to your favor of yesterday in reference to the Senate bill for the classification of mineral lands in Montana and Idaho, I have the honor to say that soon after the conversation we had (after the House bill had been before me and reported upon) I was directed by the Secretary of the Interior to prepare rules and regulations under the Barden decision. I prepared a draft of such rules and regulations as I thought would cover the case, and fixed a date for a hearing and notified all railroad companies and parties interested. A hearing was had upon the question presented in the bill and in the rules and regulations as drafted. After full consideration and examination I found that from the terms of the bill, after the examination therein proposed, the department would have no information upon which to found a hearing, as suggested in the Barden decision, and that after the report of the commissioners had been filed it would not be final, and the department would have to go through the same modus operandi that they have for years to determine whether the lands were mineral or non-mineral.

"The commissioners' report would be merely prima facie evidence of the mineral character of the lands, or of their non-mineral character, and a hearing would have to be had to determine what lands the railroads would be entitled to under their grants. After the rules and regulations were prepared and submitted to the Secretary, and after consultation with the assistant attorney general and his assistants, I came to the conclusion that the bill was impracticable and that it would not lead to the results you expected, as I originally thought it would. According to the terms of the bill, when the lands had been classified as mineral and non-mineral they would be entitled

to a hearing and a determination by the General Land Office as to their character, under the Barden decision. We went over this decision very carefully, and over the provisions of the bill, and came to the conclusion that if the bill became law this office would still have to go through the same proceedings as now before the lands could be patented to the railroad companies, as the Barden decision distinctly holds that there must be a finding by the department as to the mineral or non-mineral character of the lands before patents can issue.

"Now, under the bill all the information we would have would be merely that the commissioners had determined that certain lands should be classed as mineral or agricultural. This department, from such a report, could not patent the lands without a hearing and without putting into motion the usual methods for determining the mineral or non-mineral character of the lands. Under the rules and regulations now in force (adopted since the conversation with you and my report on the House bill) a determination can be had of all lands included in grants a great deal quicker, much more satisfactorily and at much less expense to the government.

"For these reasons I made the report upon the Senate bill, and believe that it is for the interests of the government and the people of the west that a determination be had as soon as possible as to the mineral character of lands claimed by railroad companies under their grants and those they are entitled to have patented to them, and the mineral lands so declared, so the companies can take their indemnity in lieu thereof.

"I submitted all these matters to the Secretary and had a conversation with him before the adoption of the rules and regulations, and I thought these rules and regulations would meet with your approval, and that you would see that they would facilitate matters and close up those grants in the quickest way possible. I am very sorry they do not meet with your approbation, as I thought they were just what you wanted, and we would not need the aid of Congress to make laws and regulations for the adjustment of these grants.

"I remain, with respect, your obedient servant,

"S. W. LAMOREAUX,
"Commissioner.

"Hon. Charles S. Hartman,
"House of Representatives."

The joint letter of Senator T. C. Power, Congressman Charles S. Hartman and the undersigned, in our respective official capacities, to the honorable the Secretary of the Interior, dated August 7th, 1894, entering our protest against these most absurd and inefficient rules and regulations of the Department of the Interior:

"House of Representatives, U. S.,
"Washington, D. C., August 7, 1894.

"Dear Sir:—For and on behalf of the people of Montana, whom we represent in the capacity of mineral land commissioner of the State, United States Senator and Representative in the lower House of Congress, respectively, we, the undersigned, respectively protest against the execution of the instructions contained in your letter of July 9, 1894, addressed to the honorable the Commissioner of the General Land Office, relative to the duties of registers and receivers in the selection and examination of mineral lands. In addition to this protest against the execution of said rules, we respectfully ask that the same may be revoked in so far as they apply to the State of Montana, for the following reasons:

"(1) The provisions of the rules above referred to turn over to the Northern Pacific Railroad company the authority and right to examine, select, ascertain, classify and define the lands within the limits of its grant, and, in our judgment, it is better that the government should select its agents from a wholly disinterested and non-partisan source.

"(2) Said rules, placing in the hands of the railroad company the right to represent the government and itself in the selection of such lands, practically make their selection and ascertainment a prima facie case, and throws the burden of proof upon any one interested in obtaining title to mineral lands.

"(3) As a portion of the second rule issued under date of July 9, 1894, after authorizing the land agent of the company to file with the local land officers an affidavit which shall be attached to the list of lands when returned, setting forth that he has caused the lands mentioned to be carefully examined by the agents and employes of the company as to their mineral or non-mineral character, etc., you then use this language:

" 'Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of six miles from any mineral entry, claim, or location, which list shall be transmitted to the department for its approval. If any of the lands embraced in said list of selections are found upon examination to be within a radius of six miles from any mineral entry, claim, or location, you will cause a supplemental list of such lands to be prepared and return the same to the register and receiver of the district in which they are situated, and notify the railroad company that they have been so returned. The register and receiver will at once cause notice to be published in such newspapers as shall be designated by the Commissioner of the General Land Office, containing a statement that the railroad company has applied for a patent for the lands, designating the same by townships, and has filed lists of the same in the local land office; that said lists are open for inspection; that a copy of the same, by descriptive subdivisions, has been conspicuously posted in said land office for inspection by persons interested and the public generally; and that the local land officers will receive protests, or contests, within the next sixty days for any of said tracts or subdivisions of land claimed to be more valuable for mineral than for agricultural purposes.

" 'At the expiration of said sixty days the register and receiver will return to the Commissioner of the General Land Office said supplemental list, noting thereon any protests or contests or suggestions as to the mineral character of any of such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said list. After the same shall have been returned by the register and receiver you will first eliminate from said supplemental list all the lands that have been protested, or contested, or claimed to be more valuable for mineral than for agricultural purposes, or concerning which any suggestion has been made as to their mineral character. The remaining lands you will certify to this department for approval and patenting as agricultural.'

"This portion of the rule, in effect, operates as a confiscation of the mineral lands of the United States to the use and benefit of the Northern Pacific Railroad Company. You first say:

" 'Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of six miles from any mineral entry, claim, or location, which list shall be transmitted to the department for its approval.'

"There is no word or suggestion in these rules that any person but the 'agents and employes of the company' shall make any personal examination of these lands. The only examination provided for on the part of anybody representing the government is an examination of the list. The provision for the preparation of a clear list of all lands embraced therein not within a radius of six miles from any mineral entry, claim or location, and for the certification by patent to the railroad company of all such lands as are not within the radius of six miles of any mineral entry, claim, or location, simply operates as a gift to the Northern Pacific Railroad Company of all the mines and mineral lands which may hereafter be discovered that are not now within a radius of six miles of some known mineral entry, claim, or location.

"Against this clause of the rule we desire to especially interpose our protest. The effect of the decision of the supreme court of the United States in the case of Barden vs. Northern Pacific Railroad Company will practically be nullified by the action of the Interior Department, in the issuance of these rules, if they are to be put in force.

"To say that it is the policy of the United States government to give the vast undeveloped, undiscovered mineral wealth lying within the grant of the Northern Pacific Railroad Company in the States of Montana and Idaho to any corporation, and to say that in the face of the decision of the supreme court of the United States that they are not entitled to any of these mineral lands, is but to say what this department will do if it puts into practical operation and application the provisions and principles contained in this code of rules.

"By the terms of your rules it will be observed that the very fact that the lands are without the 'radius of six miles from any mineral entry, claim, or location,' is the only perquisite necessary to give the railroad company title to such lands and to authorize the Land Department to patent such lands to the company, the question of their mineral or non-mineral character not being considered. The injustice of the rule can be thoroughly appreciated when you come to consider that scarcely a year goes by but what new mining camps are discovered, new claims are staked out, and those claims and camps are in many instances far removed from any known mineral location, claim or mine.

"It is only fair to presume that the same rules will govern the mining industry in the future as has governed it in the past. It is only fair to presume that the future will each year add additional mining claims and additional mining camps to those already in existence, and in the vast area of the State of Montana, a State of 146,000 square miles, where the mining industry is now in its infancy, it is not too much to expect that there will be a large number of new mining camps and new mineral locations established and made at points in the State now entirely undeveloped, if not entirely unknown, but still within the limits of the Northern Pacific railroad grant. And all these you propose by the terms and effect of this rule to donate to the Northern Pacific Railroad Company.

"(4) We object to that portion of your rules providing for the preparation of a supplemental list of lands, and all the proceedings which you propose under that rule, for this reason:

"That the notice which you require the railroad company to have published in some newspaper does not contain a description of the land for which patents are applied for, but only refer to certain lists that are filed in the local land office, and 'that said lists are open to the public for inspection,

that a copy of the same by descriptive subdivisions, has been conspicuously posted in said land office for inspection by persons interested, and the public generally.' What a farce it is to give notice to a miner, or to a number of citizens engaged in the mining business, who live in many instances 200 miles from the local land office, that an application has been filed for patenting certain lands by the railroad company, and that he can find a description of those lands by traveling from 100 to 200 miles to the local land office, and if he is sufficiently interested after he goes there and reads the notice, he can then file a protest against the issuance of patent.

"The railroad company always has its agents and attorneys handy and convenient to the land office to carefully guard its interests. That is its right, interest and duty, and we make no complaint of that. But the men engaged in the mining occupation in our State, that are scattered throughout the hills in remote camps, cannot be expected to employ agents to examine these lists, which are prepared by the railroad agents, acting as the agents of the government of the United States.

"If the rules which you have promulgated are to remain in force, then in order to prevent the greater portion of the mineral lands contained within the limits of the grant of the Northern Pacific Railroad Company from becoming the property of that company in spite of the decision of the supreme court of the United States to the contrary, protracted and expensive litigation will be necesssary.

"If there were any doubt whatever as to the effect of this rule, that doubt is cleared away by the following language contained in the rule itself:

" 'At the expiration of said sixty days the register and receiver will return to the Commissioner of the General Land Office said supplemental list, noting thereon any protests or contests or suggestions as to the mineral character of any of such lands, together with any information they may have received as to the mineral character of any of the lands mentioned in said lists. After the same shall have been returned by the register and receiver, you will first eliminate from said supplemental list all the lands that have been protested or contested or claimed to be more valuable for mineral than for agricultural purposes, or concerning which any suggestion has been made as to their mineral character. The remaining lands you will certify to this department for approval and patenting as agricultural.'

"You give sixty days from the posting of the notice to the miners of our State to come in and see whether or not they are satisfied with what the agents of the Northern Pacific Railroad Company, who are designated by your rule as the agents of the government, have done in the matter of the classification and segregation of the mineral lands within the Northern Pacific grant. And in the event no one appears within that time you propose to have certified to the department for approval and patenting all the lands which the agents of the railroad company, acting as the agents of the Interior Department, have seen fit to select for the company.

"(5) Regarding that portion of the rule referring to lists already prepared in accordance with rules and regulations, where such rules have been complied with, that the lands effected should be excepted from the terms of the rule of July 9, we simply say that is in direct contravention of the decision of the supreme court declaring that the mineral lands are not included and were not intended to be included in the grant to the Northern Pacific Railroad Company, and in view of the fact that no lands have been patented to the railroad company within its grant in the State of Montana, we protest against

the issuance of any patent or patents to said company for any lands within its grant in the State of Montana until the entire grant is examined and classified and the mineral lands segregated from the non-mineral by a competent commission, to be appointed in the manner set forth in H. R. 3476, which passed the House of Representatives on the 24th day of July, 1894.

"(6) These rules, which were issued by your department without any notice whatever to the mineral land commissioner of our State, or to either of our Representatives in Congress, are so harsh and oppressive upon our citizens that we feel justified in asking a total abrogation of the same.

"(7) We deny the right of the Secretary of the Interior to issue a code of rules which, in its effect, abrogates, sets aside and nullifies the law of the land.

"(8) The bill to which we have above referred, providing for the classification and examination of mineral lands within the grant of the railroad company, was a bill which met with your unqualified approval in your letter of September 14, 1893, addressed to the Hon. James H. Berry, chairman committee on public lands, United States Senate, which can be found in H. R. report 502, second session Fifty-third Congress.

"The bill also received the endorsement of the honorable Commissioner of the General Land Office in his letter of October 14, 1893, addressed to the honorable Secretary of the Interior, and which also appears in the same report.

"We have every reason to suppose and every reason to believe that with these letters in our possession, and as a portion of the public files, that your support, and the support of the honorable Commissioner of the General Land Office would be heartily accorded to us until the final passage of the bill in the Senate. But to our great surprise, and, we may say, disappointment, we find your department, on the 9th of July, issuing a code of rules, to which we have referred, and on the 30th of July writing a letter to the Hon. Samuel Pasco, acting chairman of the committee on public lands, United States Senate, in opposition to Senate bill 434, which was an exact copy of the House bill to which we have above referred.

"It is true, it may be said, that if we are right in denying the authority of the Interior Department to thus nullify the effect of the decision of the supreme court, we have our remedy by testing the question in the courts. We are aware of that right, but are not desirous of entailing the expense of a protracted litigation upon our people again. Having won the main fight in the Barden case it is with great regret that we find the Interior Department nullify the effect of that decision by causing the agents of the railroad company to be made the agents of the government, and by placing in the hands of the railroad company the machinery whereby its agents shall make the examination and classification of these lands.

"It seems to us that the reason assigned by the Land Department in support of the bill for the examination and classification of mineral lands in the States of Montana and Idaho were good when they were first given by that department, and that they are equally good now.

"It seems to us that the appointment of the commissioners provided by that bill from the residents of the respective land districts, of men who have had practical experience in the mining and prospective business, is a much more accurate, just and satisfactory way of examining and classifying the mineral lands within the grant than the proposition contained in your code of rules, which constitute the agents and employes of the beneficiary under the grant the agents to perform that service.

"Your action in thus designating the agents of the company to examine, classify and set apart the mineral lands from the agricultural lands, to the end that the lands found to be non-mineral shall be patented to the railroad company, would find a parallel if a court ordering partition of lands from several parcels between conflicting contestants for those lands should arbitrarily appoint one of the contestants to make examination and selection of the property in controversy. There is but little doubt what the result of such examination and selection would be. It is certain that the party making the selection would not get any the worst of the transaction, and we are of the opinion that the agents of the railroad company, acting under your authority, proceeding to examine, classify and select these lands, that they will see to it that the Northern Pacific Railroad Company will at least receive all it is entitled to.

"We are anxious to receive a reply to this communication at as early a date as possible, that we may know whether it is to be the policy of your department to continue this code of rules or not, that we may govern our future course accordingly.

"We are yours, very truly,
GEO. W. IRVIN,
"Mineral Land Commissioner, State of Montana.
"THOMAS C. POWER,
"U. S. Senator, State of Montana.
"CHAS. S. HARTMAN,
"Member of Congress, State of Montana.

"The Secretary of the Interior,
"Washington, D. C."

Senator Power obtained unanimous consent of the Senate therefor, and we were thereby enabled to have the Government Printing Office formulate this correspondence into a Senate document (Misc., No. 258), of which we secured for our future use 1,000 extra copies, one of which is filed with and made a part of this report.

It is apparent to me, and I think will be made so to the Senate of the United States, that a law to examine, classify and segregate the mineral lands not granted within the Northern Pacific railway subsidy is now more necessary than ever.

"When, after infinite labor and organization, the people have had their day in the highest court of the land, and that court has declared in unmistakable language that they and the government of the United States have as a right everything that was claimed, and in the face of this declaration an executive department goes to work and formulates rules and regulations under this decision so directly contrary to its spirit as in effect to nullify it, it is then time to enact a measure so plain that nothing will be left for a complaisant ministerial officer to misconstrue or pervert.

The situation of the mineral land bill is interesting in that we have only from the first Monday in December of this year until the 4th day of March, 1895—or what is called the "short' session of Congress—in which to pass it through the Senate and obtain executive approval. Failing in this, the legislative work has to be all commenced anew, or we will be compelled to surrender to the construction by the Interior Department of the decision of the supreme court. I am prepared to push matters in the Senate and House, and have provided myself with letters addressed to the Senate committee on the

public lands containing reviews and criticisms on the action of the Interior Department, and taken such other steps as I believe will aid us materially in accomplishing the desired end.

I have prepared and desire passed, in substantially the same form, a memorial from our Legislature to the Senate of the United States, urging final passage of our bill; and I hope that this memorial will be speedily acted upon.

I am anxious that the vacancy shall be promptly filled in the Senate from Montana, so that every effort may be made in this vital issue. I regard the success or failure of the mineral land bill as a critical epoch in the history of the State of Montana, and hope that no remissness on the part of any of us will allow such a catastrophe as failure would mean to befall our young commonwealth.

I will be at my post promptly, and at all times in attendance upon the parties in charge of the measure. I recognize that we have a hard fight before us; but we must succeed.

Very respectfully, etc.,

GEO. W. IRVIN,
Mineral Land Commissioner.

FINAL REPORT

OF THE

Mineral Land Commissioner.

Butte, Mont., March 4, 1895.

To His Excellency John E. Rickards,
Governor.

Prior to returning to Washington to take up the final contest which was to determine whether or not the mineral lands lying within the grant of the Northern Pacific railway in Idaho and Montana, were to be preserved to the government and the people of the State, I addressed communications to the leading citizens of Montana, to the state officers, the judiciary and to organizations that should have been interested in this most vital question, for the purpose of influencing the Senate public lands committee in our favor. I obtained from Hon. W. W. Dixon an analytical review and criticism of the department rules of July 9th, 1894. I also left in the hands of Mr. Monteath, member of the House of Representatives from Silver Bow county, a draft of a memorial to be passed by the Legislature as soon as possible after that body shall be convened.

With these and other preparations, I proceeded immediately to the capital of the nation,, and on my arrival, Dec. 2, 1894, I at once commenced to interview those Senators who, by the nature of their positions, could be of service to us. I soon found that previous conjectures were correct and that the land grant railroads were represented in force by skilled attorneys, lobbyists and complaisant United States Senators. Some of these latter, to my surprise, came from a district of the United States affected by these grants, and thus were not representing the interests of their constituents.

Just as soon as possible after my arrival in Washington, Senator Power, Congressman Hartman and I agreed on a general plan of action which involved an inquiry: First, to ascertain if since the adjournment of Congress we had lost any ground, and were rewarded by finding that those Senators who had favored us were still true. However, there had been a great unknown quantity among the democratic Senators that we feared would be sadly disaffected by the hostile attitude of the Interior Department. We knew the railroad Senators would make all possible use among those sustaining the administration of the fact that the honorable Secretary had declared that his code of rules of July 9th was amply sufficient to cover all necessities looking to the examination and classification of the mineral lands.

We all knew that we had to proceed along deliberate lines of action and that conciliation and explanation was to be the policy pursued.

We further knew that to obtain the standing before the Senate to entitle

us to consideraion, it was necessary to have our bill favorably reported from the committee on public lands before the holiday recess, and to this end we immediately bent our best efforts.

The first meeting of the committee on public lands occurred Monday, December 10th, at 10 o'clock, and on account of its being the first, it was given over to simple routine work, principally setting down matters for future hearing. Senator Power succeeded after some skirmishing on the part of Senators Dolph, Vilas and Pasco, in placing our date for Friday, December 13th, at 10 a. m., and in also obtaining permission for Congressman Hartman and myself to appear before the committee. When the time arrived a full committee was present, and Mr. Hartman delivered a very able but extemporaneous address in which he presented in clear and forcible language the points upon which the people and the government relied to sustain the necessity for our bill, and at the close of his remarks submitted for the use of the committee the documents herein following:

LETTER OF HON. W. W. DIXON.

"Butte, Mont., October 29, 1894.

"Dear Sir:—My attention has been called to Senate Misc. Doc., No. 258, Fifty-third Congress, second session, containing H. R. 3476, 'An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho' (Senate bill No. 434), and certain correspondence between the Secretary of the Interior, the Commissioner of the General Land Office, the chairman of the Senate committee on public lands and Hon. Charles S. Hartman, Representative, and Hon.T. C. Power, Senator, in Congress from Montana, and yourself, and certain rules and regulations of the Land Department, all relating to H. R. 3476, above mentioned, and to the matter of the segregation of mineral lands within the Northern Pacific railroad land grant.

"From the fact that I introduced and endeavored to secure the passage in the House of Representatives of the Fifty-second Congress of a bill almost identical with H. R. 3476; that I was of counsel for the mineral claimants in the Barden case in the United States supreme court; and that a long residence in Montana has made me somewhat familiar with mining matters and the interests and wants of the people, I consider it neither inappropriate nor presumptious for me to make a few comments upon this very important matter, in addition to those contained in the communication of Senator Power, Representative Hartman and yourself to the Secretary of the Interior, of date August 7, 1894,; which communication, permit me to say, I heartily indorse.

"It was something of a surprise to me to learn that the Interior Department, which in August, 1893, had approved Senate bill No. 434 in all its material parts, had within less than a year thereafter entirely changed its opinion, and recommended that the bill should not pass. This sudden change of position, it is said, was caused by the decision of the supreme court in the Barden case. But what is there in that opinion to justify so radical a shifting of opinions? It is true that that decision holds that matters relating to public land grants and the adjustment and selection thereof, under the Northern Pacific land grant as well as other grants, are within the jurisdiction of the Land Department. But this was not the announcement of any new principle. It had been frequently so decided previously by the same court and had been for years the contention and practice of the Land Department. But the court does not say or intimate that Congress cannot divest the department of its jurisdiction, or reform or prescribe its procedure. It does not say that

no further legislation is required to enable the department to properly exercise its powers. On the contrary, the court says (Barden vs. N. P. R. Co., 154 U. S., p. 330):

" 'It is true that the patent has been issued in many instances without the investigation and consideration which the public interest requires; but if that has been done without fraud, though unadvisedly, by the officers of the government charged with the duty of supervising and attending to the preparation and issue of such patents, the consequence must be borne by the government, until, by further legislation, a stricter regard to their duties in that respect can be enforced upon them.'

"But the bill under consideration, as the slightest examination of it will show, does not attempt to interfere with the jurisdiction of the Land Department in the matter, but only to afford it means and money to more fully investigate and more correctly determine the character of the lands within the railroad grant. It does not prevent the department from availing itself of any information its files or records may afford.

"I believe it has been a continual complaint of that department that the appropriations of Congress do not enable it to employ the agents or use the money frequently necessary in the investigation of land matters. A disinterested observer might therefore imagine that it would more than willingly accept any legislation that would lighten its labors and increase its facilities for getting at the facts. It would appear, however, that the department objects to any interference by Congress with its high prerogatives.

"I infer from its opposition to the bill, and from the rules it prescribes and seems to prefer to any legislation, that it would not consider itself at all enlightened or assisted by the examinations and reports of the sworn commissioners appointed by the President, and provided in the bill, but would prefer to act upon the statements of the hired agents of the interested railroad corporation.

"Let me call attention, briefly, to some of the objections made by the Commissioner of the General Land Office to the bill under consideration, as stated in his letter to the Secretary of the Interior of date July 30, 1894:

"First. That the bill does not apply to railroad land grants in all the states. In answer to this it may be said that should other states desire it it is an easy matter to pass another act applying the same rules to lands within railroad grants in such other states.

"Second. The expense involved. It is not true that this would be great, or at all considerable, when compared with the benefits derived. The bill does not contemplate an examination by small tracts or legal subdivisions, but by areas of the same general character, situation and formation. Neither would the time occupied be great—not nearly so great as to await the slow progress of government surveys. As to the simplicity and effectiveness claimed for the regulations of the Land Department, those who have had most experience of their complexity, their uncertainty, and their continual change can best judge.

"Third. That no legislation is required. I shall not enlarge upon this objection. In the course of a somewhat expensive experiment in this matter of the mineral lands I have never heard any one at all acquainted with the situation, either in or out of Congress, except the Northern Pacific Railroad Company and the present officials of the Land Department, deny that some legislation by Congress was imperatively and speedily required; and that there was 'urgent necessity' for it, and that, too, 'in the nature of that embraced by the bill now

under consideration.' Even the present Commissioner of the Land Office was satisfied upon a careful consideration no longer ago than August, 1893. (See his letter to the Secretary of August 29, 1893.)

"Next, as to the rules and regulations of the Secretary of July 9, 1894, to be observed in determining the mineral or non-mineral character of the lands. By these rules, 'when the lands selected by the company are within a mineral belt or proximate to any mining claim,' the land agent of the company is to make and file an affidavit, to be attached to the list of lands returned, setting forth in substance that he has caused the lands mentioned to be carefully examined by the agents and employes of the company, as to their mineral or agricultural character, and that to the best of his knowledge and belief none of the lands returned in said lists are mineral lands. These lists, I take, it, would necessarily become prima facie evidence of the character of the land and suffice to put the burden of proof upon the party disputing them.

"I cannot too strongly condemn this extraordinary regulation, which, in opposition to every principle of law and justice and fair dealing, leaves the examination and report as to the character of the lands as to the agents and employes of a party to the controversy—a great corporation vitally interested in acquiring title to as much of the mineral lands within its grant as possible. A request to a court to make an order upon similar lines in a judicial proceeding would be treated as absurd. In our system of jurisprudence the ancient maxim that 'no one should be judge in his own cause,' is a fundamental principle recognized everywhere except, it seems, in the Land Department of the government.

"These examiners are to be agents and employes of the company, and are responsible to it alone. They are not representatives of the government, and under no obligation to it. There is not even any means provided to ascertain their names or identity. They are not even under the poor sanction of an oath. They can examine and report whatever they choose. The only oath required is that of the land agent of the company, and that only to the best of his knowledge and belief—no personal knowledge of anything on his part being required.

"Who is to decide if the lands selected are 'within a mineral belt,' or 'proximate to any mining claim?' It must be the railroad company, for no one else is designated in the regulations. And yet, if the lands are not 'within a mineral belt, (which the company is to determine itself), the company is not required to have them examined at all. Under this system of procedure let any candid man, acquainted with the circumstances, give his opinion as to how many 'mineral belts' or mining claims or locations,' or tracts of mineral land, would be found reported by the agents and employes of the Northern Pacific Railroad Company, when their discovery would only entail loss, expense and litigation upon their master.

"I do not wish to misrepresent the regulations of the Secretary. They provide for protests and contests against the classification of lands by the railroad company, but under such conditions and restrictions as will in most cases make opposition practically useless.

"I do not believe that the railroad company itself could devise more effectual means to enable it, in the teeth of the decision of the supreme court, to get title to large tracts of mineral land than these rules and regulations, if put into practical operation, will afford. I say this without disrespect to the Land Department, or any imputation upon its good intentions. The depart-

ment seems to consider the subject as of importance only to the railroad company and adverse mineral claimants, not regarding the interest of the government in the mineral lands and its duty to see that they are preserved to the people.

"Other important objections to the rules and regulations might well be made; but I content myself with those I have noted.

"One great advantage of the proposed bill is that it provides for the examination and classification of unsurveyed as well as surveyed lands. The rules of the department must necessarily apply only to surveyed lands. If the progress in surveys continues to be as slow hereafter as it has been of late years, many years must elapse before all the lands within the grant can be even ready for selection.

"Another important advantage of the bill is that it places to some extent upon the government, where it belongs, the burden of protecting and preserving the mineral lands within the railroad grant, instead of leaving this public duty to be performed by individual mineral claimants or by the people who reside in mining countries, at their own effort and cost. In this connection I quote the following from Mr. Justice Field's opinion in the Barden case (154 U. S., p. 319):

"As justly observed by counsel for defendant in their very able brief, 'the reservation in the grant of mineral lands was intended to keep them under Government control for the public good, in the development of the mineral resources of the country and the benefit and protection of the miner and explorer, instead of compelling him to litigate or capitulate with a stupendous corporation and ultimately succumb to such terms, subject to such conditions and amenable to such servitude as it might see proper to impose. The Government has exhibited its benificence in reference to its mineral lands as it has in the disposition of its agricultural lands, where the claims and rights of the settlers are fully protected. The privilege of exploring for mineral lands was in full force at the time of the location of the definite line of the road, and was a right reserved and excepted out of the grant at that time."

In conclusion, I sincerely hope that the Land Department may see fit to suspend its present rules and regulations as to the classification of mineral lands, and to urge the passage of the proposed bill. If it does not, I hope that Congress will, notwithstanding, speedily make it a law.

If anything I have written will help the good cause in which you are engaged, make use of it as you think best.

Yours, very truly, W. W. DIXON.

HON. GEO. W. IRVIN,
Mineral Land Commissioner, State of Montana.

LETTER OF HON. GEO. H. CASEY.

D.

BUTTE, MONT., November 19, 1894.

Dear Sir: I am a resident of Butte City, Mont., and am engaged in mining. I have lived in this community for fifteen years. I am the owner of quite a number of mines and mining claims in different parts of the State of Montana. I have had nine controversies with the Northern Pacific Railroad Company over mining land. In every case our legal differences have been brought about by my partners and myself applying for patent from the Government of the

United States for mineral lands within the limits of the grant in aid of the construction of the Northern Pacific Railway, and its filing an adverse claim to the same.

So far, most of the cases have been heard and determined in the local land office, and thence appealed by the railway company to Washington, where my claims have been sustained. I have been put to great expense in all of these nine cases. I find that it is necessary to put up every dollar of the cost of these examinations and hearings, and whether I win or lose, I am unable to recover a single cent for costs or damages from the railway company.

I think the attitude of the department toward the settlers and in behalf of the Northern Pacific Railway, unintentional I doubt not, is an outrage upon the people of Montana, and entirely unfair to the Government of the United States, in that opportunity is given to the railway company to obtain land the Congress of the United States never intended to grant.

I write this letter because I learn there is pending in the United States Senate Senate bill No. 434, an act to examine, classify, and segregate the mineral lands within the railway grant, and that the Interior Department has issued a set of rules and regulations, dated July 9, 1894, which is intended to render the act unnecessary.

From my experience with the Northern Pacific Railway, I do not hesitate to say that the failure to pass said Senate bill, and the adoption in lieu thereof said rules and regulations, no matter how fairly intended, would be a calamity to the people of the State of Montana, and a swindle upon the Government of the United States. As a citizen with sufficient experience with the land department of the Northern Pacific Railway to turn ones hair gray, I protest against such absurd and ridiculous misconstruction of the decision of the Supreme Court recently rendered, as we supposed, in favor of the people of the Government.

Respectfully yours,

GEORGE H. CASEY.

Chairman of the Senate Committee on Public Lands,
Washington, D. C.

LETTER OF HON. WILLIAM H. DE WITT, ASSOCIATE JUSTICE, MONTANA.

E.

HELENA, MONT., November 13, 1894.

My Dear Sir: I am in receipt of your letter of November 10, 1894, in which you call my attention to the Senate Mis. Doc. No. 258, containg H. R. 3476, Fifty-third Congress; also the correspondence of the honorable the secretary of the Interior, the Commissioner of the general Land Office, and others. You have also submitted for my inspection the letter addressed to yourself upon this subject by the Honorable W. W. Dixon, late member of Congress from this State.

I respond with pleasure to your request that I give you some expression of opinion as to this proposed legislation in regard to the examination and classification of the mineral lands in this State and Idaho. But you, with Senator Power and Mr. Hartman and Mr. Dixon, have entirely relieved me from the duty of making any extended comments. I have carefully read all that is contained in the document above referred to, and also the very able letters of yourself with Senator Power and Mr. Hartman, and also the convincing argument contained in Mr. Dixon's letter.

I think, perhaps, it is not assuming too much for me to believe that I have had some little experience in these matters, which entitles me to an opinion. Like all lawyers in this state,, I have often had occasion to study the matter which is the subject of your correspondence. At this time, and in view of the full consideration given to the matter by the letters above referred to, I think I can not do more, in review by myself, than I can do by saying that I very cordially concur in the views expressed in the letters which have already been written, and which I above refer to. This is a subject which is very near to the people of this State and of very vital importance to our greatest industry.

I beg leave to add the hope that you may be wholly successful in the efforts in which you are engaged.

Yours, very sincerely, WILLIAM H. DE WITT.

HON. GEORGE W. IRVIN,

Mineral Land Commissioner of the State of Montana.

LETTER OF HON. LEE MANTLE, HON. W. R. KENYON AND HON. J. H. CALDERHEAD.

F.

BUTTE CITY, MONT., November 16, 1894.

Sir: The undersigned, chairmen, respectively, of the Republican, Democratic and People's Party State central committee, for Montana, desire, through you, to enter a respectful but emphatic protest against the code of rules formulated by the Interior Department, through Land Commissioner S. W. Lamoreaux, for the examination, classification and segregation of mineral lands within the Northern Pacific Railroad land grant.

We have read the correspondence contained in Senate Mis. Doc. No. 258, relating to this subject, and without going into details we assert that the enforcement of the rules above referred to would work a practical nullification of the decision of the Supreme Court of the United States rendered in the Barden case, and would make valueless all the time, labor, effort and money expended by the citizens of this State during the past seven or eight years in their struggle against gigantic railroad corporation to preserve the mineral lands of the State to the Government and the people.

When the Supreme Court rendered its decision in the Barden case, the people rejoiced in the belief that the struggle was ended; that the owners of mining rights and claims were at last relieved of the danger of having their claims contested by the railroad company, and that the provision in the company's grant, excluding mineral lands (except coal and iron), was definitely construed and settled for all time to come. But we repeat that if the rules referred to shall be enforced they will not only overturn the Supreme Court decision, but, worse still, they will practically place the whole subject of selecting, classifying and segregating these mineral lands in the hands of the railroad company and its agents and employes, a proceeding directly opposed to every principle of fairness and justice.

We heartily indorse and approve "H.. R. 3476, An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho," as being a measure urgently needed in consideration of the unfortunate and uncertain conditions now surrounding the mineral domain of Montana and Idaho. We assert that the pressing and immediate necessity for some such legislation by Congress to protect the interests of the Government

and of the people of these States from the illegal claims of the railroad company must be apparent to the most casual observer in view of the unjust and partisan rules above referred to. The interests involved in this matter are too vast and too sacred to be left to the changing views and biased opinions of the Land Office officials. Congress must step in and definitely, permanently and equitably adjudicate the enormous interests involved.

Respectfully yours,

LEE MANTLE,
Chairman Republican State Central Committee.

W. R. KENYON,
Chairman Democratic State Central Committee.

J. H. CALDERHEAD,
Chairman People's Party State Central Committee.

The Chairman of the Committee on Public Lands.
United States Senate, Washington, D. C.

G.

TELEGRAM FROM HON. W. A. CLARK.

LOS ANGELES, CAL., December 14, 1894.

To the Hon. George W. Irvin,

Mineral Land Commissioner, State Montana, Washington, D. C.

Inform Senate Committee on Public Lands I unqualifiedly indorse protest of yourself, Power and Hartman of August 7, to honorable Secretary of Interior. Interior Department rules of July, 1890, I consider impracticable, unfair and prejudicial to the peoples interests.

W. A. CLARK.

H.

LETTER OF HON. J. E. RICKARDS, GOVERNOR OF MONTANA.

THE STATE OF MONTANA, EXECUTIVE OFFICE,

Helena, November 19, 1894.

The Honorable Chairman Committee on Public Lands,
U. S. Senate, Washington, D. C.

Sir: The interests of the State of Montana imperatively demand such legislation by Congress as will protect this vast mineral belt from illegal claims that may arise through the ill-timed rulings of the Interior Department. The code of rules formulated by the department for the segregation and classification of the mineral lands lying within the grant of the Northern Pacific Railroad can have no other effect than to neutralize the decision of the Supreme Court in the Barden case, and rob our people of interests vital to the welfare of the State. I heartily approve of the provisions of House bill 3476—"An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho"—and urge its adoption in its entirety by the Senate as a measure necessary to adequately protect the rights of the people to the mineral lands lying within the railroad grant.

With great respect, I am, sir, yours,, very truly,

J. E. RICKARDS,
Governor Montana.

After I had briefly indorsed the statements of our Congressman, we were both subjected to the rules of the committe, and retired from the committee room and deliberation ensued. The hour of the session of the Senate was so near at hand (12 M.) that the further consideration of the subject was deferred until the following Monday; but by this time we had reason to believe we would get a report. This proved true, for at the meeting on Monday, the 17th, after a protracted committee debate, with all of the parliamentary obstacles in the way, the committee agreed to report the bill favorably by the following vote:

Affirmative.	Negative.
Allen.	Berry, Chairman.
Martin.	Carey.
Dubois.	Dolph.
McLaurin.	Pasco.
Pettigrew.	Vilas—5.
Power—6.	

A majority of only one, but sufficient. Mr. McLaurin, chairman of the subcommittee, was thereupon duly instructed to prepare the majority report of the committee, and he in turn requested Mr. Hartman and me to furnish him with the necessary document, which we did, and which in words and figures is as follows:

IN THE SENATE OF THE UNITED STATES.

December 17, 1894.—Ordered to be printed.

Mr. Power, from the Committee on Public Lands, submitted the following

REPORT.

(To accompany H. R. 3476.)

The Committee on Public Lands, to whom was referred House bill 3476, having had the same under consideration, beg leave to report as follows:

The committee find, as the result of their examination of this bill, that by the act of July 2, 1864, granting a corporate charter to the Northern Pacific Railroad Company, together with each alternate section of land for the distance of 40 miles on each side of the line there were especially excepted by the terms of the act from the provisions of the grant, all mineral lands, or lands containing mineral (not including coal and iron). The Northern Pacific Company having, in many instances of controversy between itself and claimants for mineral lands, contended that the clause in the grant excepting mineral lands from the operation of the grant, meant lands known to be mineral at the time the grant took effect (to-wit, July 6, 1882), and that all lands not known to be mineral at that date, but which subsequently should be discovered to be mineral, belonged to the railroad company.

The contention resulted in various lawsuits, and was not decided by the Supreme Court of the United States until the 26th of May, 1894, when the case of R. P. Barden et al. vs. the Northern Pacific Railroad Company was decided by the court, and the contention of the Northern Pacific Railroad Company denied.

The Supreme Court decision expressly states that it is in the province of the Department to determine what are mineral and what are non-mineral

lands, and says that if the present law is not sufficient it is the duty of Congress to supply by law the necessary machinery. This decision finally settles the legal controversy between the railroad company and the claimants of mineral lands on odd sections within their grant. Nothing, therefore, is left to be done but to provide for the examination, classification and determination of what lands within the grant of the railroad company are mineral and what are non-mineral, to the end that the mineral lands may be thrown open to the public for settlement and that the railroad company may have issued to it patents for the non-mineral lands to which it is entitled under its grant.

This bill passed the House of Representatives on the 23d day of July, 1894, and is now pending before the Senate. The bill provides for the appointment of three commissioners for each land district mentioned in the bill. The duties of these commissioners are plainly defined by the terms of the bill, and it is believed by your committee that by the appointment of these commissioners better, more satisfactory and more just results will be attained in the classification of the lands within this grant than in any other way that has been presented to your committee.

A code of rules has been prepared by the Secretary of the Interior, pursuant to a suggestion contained in that decision, but it appears to the committee that a better and more equitable examination and classification of these lands could be had by the method proposed in this bill than by the method suggested in the code of rules of July 9, 1894, issued by the Secretary of the Interior.

The bill under consideration goes further than the code of rules, in that it provides for the classification and segregation of these lands, whether surveyed or unsurveyed.

The Commissioner of the General Land Office in his letter of August 29, 1893, to the Secretary of the Interior, having under consideration Senate bill 434, which is an exact copy of H. R. 3476, used this language:

"Upon a careful consideration I am satisfied that there is urgent necessity for Congressional legislation in the nature of that embraced by the bill now under consideration."

Further on in that letter he used the following language:

"To me it is very clear that a law should be passed by Congress enabling the Land Department to thoroughly investigate the character of lands supposed to be mineral and within the reservation of the law, before the railroad company is entitled to patent; and inasmuch as this bill has for its purpose and object a careful examination and a just and intelligent classification of this great body of lands, with reference to their mineral or non-mineral character within the meaning of the granting act by competent officers, and the speedy and equitable determination of the rights of the Government and the said company within the primary and indemnity limits of the grant in said States, as well as the protection of the public interests in so much of the land affected by the grant as was not intended for the company, I recommend its passage."

It will be observed from the report of the Commissioner of the General Land Office that a very large acreage of land is concerned in this bill, and the rights of very many citizens depend upon its passage, as well as the rights of the Government of the United States. It is unquestionably the right of the Government to receive whatever remuneration legitimately arises from the sale of the mineral lands of the United States, and your committee, therefore, believes it incumbent upon Congress, following the decision of the Supreme

Court of the United States, to provide, by legislative enactment such as the pending bill provides, for the preservation of the mineral lands of the United States within the grant of this railroad company to the United States, to the end that it may be disposed of to the citizens of the United States and the revenue derived thereby go into the Treasury of the Government.

The Commissioner submits the following statement as an approximate estimate of the lands within the grant in the States of Montana and Idaho:

	Acres.
Granted in Montana	17,838,080
In 10-mile indemnity limits	4,992,000
Selected by company, now pending	4,336,285
Surveyed within the grant	14,758,720
Granted in Idaho	1,900,800
In 10-mile indemnity limits	576,000
Selected by company, now pending	122,000
Surveyed within the grant	403,200

Another reason impelling the committee to report favorably this bill, is that its passage will prevent the necessity of endless litigation between a large number of mineral claimants and the railroad company, which would not be prevented by the code of rules issued by the Secretary of the Interior, heretofore referred to.

The passage of this bill will, in the opinion of your committee, operate to finally settle and adjust whatever differences now exist between the mineral claimants, and through them, the Government of the United States and the railroad company. This is highly desirable,, not only in the interests of the Government and the settlers, but in the interest of the railroad company itself, for, by the final determination of the title to the land of the railroad company it is then placed in a position to more easily dispose of the lands which it owns, and concerning which there is no question as to title, and bona fide purchasers of these lands from the railroad company receive a similar settlement of their titles.

Your committee observes that this bill is not a general one, in that it does not apply to all land-grant railroads, and while it believes that legislation of a similar character applied to all land-grant railroads would be advisable, yet it does not feel that it ought to imperil the passage of the bill, which it believes to be a wise and conservative measure, even though it does not go as far as it might desire, by attempting to amend it to make it general in its provisions. It is a step in the right direction.

Attention is invited to the paper appended hereto, marked A, B, C, D, E, and F.

Your committee therefore report H. R. 3476 to the Senate with the recommendation that it do pass.

This report was duly presented the following day and our bill was upon the calendar for future action. Already the symptoms of the holiday breaking up were so apparent that we were admonished that so conservative a body as the United States Senate would listen to us no further at this time, and on Thursday, the 20th, that body entered upon its recess, which carried us over until January 3d, 1895, when Congress again convened.

While successful in the Supreme Court and before the House of Representatives and the committee of the Senate on Public Lands, we were all impressed with the fact that our great fight was to come in the Senate. We did not fear antagonisms on the floor of the Senate, but we knew, and had plainly mani-

fested to us, that we were surrounded by covert enemies, who were working day and night to accomplish our undoing. However, we had also made one decided gain. Senator Berry, chairman of the Public Lands Committee, had felt that it was his duty as a Democrat to support the administration while the bill was in committee; he also felt that the committee having, after full and complete examination of the bill, reported favorably, it was his duty to favor it before the Senate. This was especially so, as he believed in its merits.

Our position was so interesting about this time that I believed I had a perfect right to do a little striking back at Senators who hailed from mineral land States, but had sought to strangle us. I therefore sat down and drew up two memorials—one from the Oregon Legislature to the United States Senate, praying the passage of the Mineral Land Bill, and the other from the Wyoming Legislature. In letters accompanying them, I gave members of the Legislature my views of the attitude of their Senators in this behalf, and asked their rebuke. I think it helped to defeat them, especially in Oregon, where resolutions were passed asking that their State be made a beneficiary of our legislation. I herewith present the letter sent to Wyoming, almost a duplicate of my letter to Oregon.

WASHINGTON, D. C., Dec. 20, 1894.

Hon. Clarence D. Clark,
Cheyenne, Wyoming:

Dear Sir: You are the only Republican of prominence in your State with whom I have the honor of even a limited acquaintance.

Therefore I take the liberty of trespassing a moment upon your good nature and patience. I beg of you to read the enclosed public documents, numbered, respectively, Senate Mis. No. 258, 53d Congress, 2d session, and Senate Calendar No. 734, Report No. 726, 53d Congress, 3d session.

By the first document you note an Act, H. R. No. 3476, To examine, classify and segregate the mineral lands within the railroad grant of the Northern Pacific Railway in Montana and Idaho. This bill was the result of seven years work and effort on the part of the miners and, indeed, all of the citizens of Montana. It was introduced in the 52d Congress by Hon. W. W. Dixon, the then Democratic member of Congress. It was not acted upon because the main question, the right of the railroad company to mineral lands, was being adjudicated, and at the time on appeal to the Supreme Court of the United States.

It was again introduced in the House at the extra session, and the Supreme Court having decided against the railway company, it passed the House on the 24th day of July of the second session. On p. 7 of said document you will see, under date of August 29th, 1893, the Commissioner of the General Land Office approves the bill, but, by turning to the letter just preceding it, dated eleven months later, the same official in equally strong terms disapproves the identical bill. On p. 10, under date of July 9th, 1894, the Secretary of the Interior formulates a set of regulations which he intends shall cover all necessities and render the law we desire unnecessary. By reference to p. 12 you will find a joint letter from Senator Power, Congressman Hartman and myself, showing, as we deem, incontrovertibly, that these rules are entirely in the interest of the railway companies and directly opposed to the people resident within the exteriors of railway grants.

The second document contains the report of the Senate Committee on Public Lands in favor of the passage of the bill; the bill, as it passed the house, and a review by Hon. W. W. Dixon, who, besides being the author of the bill,

was leading counsel before the Supreme Court, and who obtained the decision following on the 8th page. The interests of the miners was taken up in Montana, and a State Bureau was created to preserve to the people the said mineral lands. Major Martin Maginnis, whom you know, was the first State Commissioner, and I am the present incumbent.

At the very first meeting of the coming Montana Legislature, a memorial will be passed criticising the code of rules adopted by the department, and approving the enclosed mineral land bill, and I enclose you a like memorial which I wish you would use your influence to have enacted by the Wyoming Legislature. In attempting to free our mineral lands from the rapacity of the Northern Pacific Railway, our State has been put to great expense. It has labored at a great disadvantage in fighting so far away from home, and against the combined influence and activity of the railroad companies and their paid lobbies in Washington, together with the aid they obtain from the peculiar revised views of the Interior Department.

If your Legislature will in neighborly comity give us the aid of its recommendation, it will materially help the people of Montana to a solution of a question of more importance to them, in my judgment, than even the silver problem.

I would especially like some expression from your Legislature because of the unfortunate attitude toward us of Senator J. M. Carey, of your State.

I had never said anything to him relative to this question, because I had been assured by Senator Power, of Montana, that the Senator had informed him he would support the bill so long as it did not affect his State. On Friday, the 14th day of this month, the Committee on Public Lands held a session, and were addressed by Hon. C. S. Hartman, member of Congress, in behalf of the bill. Senator Carey was present, and for some reason Senator Power was led to fear that he would not support the bill. An adjournment of the committee was had until the following Monday, the 17th, when a vote was to be taken. Senator Power, ascertaining in the meantime that your Senator was going to be absent at that meeting, on the 14th wrote to him a note, of which the enclosed is an exact copy. On the 17th a full committee was present, except Mr. Carey, and the measure was voted upon. However, it was favorably recommended by a majority of the committee. As to Mr. Carey's ultimate vote in the Senate upon the measure, Senator Power still has hopes favorable to his acting with us, and, upon inquiry, ascertained that no aid is to be expected from him.

The people of Montana do not feel that there is any impropriety in detailing these facts to the people of a neighboring State, especially if it might result in reclaiming through the people of that State a vote that now looks to us as lost.

This we believe to be true when the interests of both States may become identical on this very question, and are identical in so many interests. Our law was not made applicable to all land grant railways, because all communities had not suffered as we have, and because all land grants are not the same in exact terms.

If you see your way to have your Legislature take up this matter, to be of any use to us it would have to show results in the earliest portion of your session.

Begging pardon for inflicting upon you this long letter, and thanking you in advance for whatever you may think best in this behalf, I have the honor to be,

Very respectfully, yours,
(Signed.) GEO. W. IRVIN,
Montana State Mineral Land Commissioner.

The 20th of December I wrote a letter to the Anaconda Standard, reciting the situation in which we found matters at that time, and urging upon the public at home to awake to a grave and impending crisis; to help us before the Senate by private letters and public action. As that letter was miscarried or ignored, I append herewith a copy:

WASHINGTON, D. C. Dec. 20th, 1894.

Editor of the Standard:

Senator Power mailed you to-day Senate Mis. Document No. 258, 2d session 53d Congress, and Senate Calendar Document No. 734, 3d session 53d Congress. The first one contains in full the mineral land bill. The letter of the commissioner in approval of the same, bearing date August 23d, 1893. His letter eleven months thereafter disapproving the bill, and a set of rules and regulations dated July 9th, 1894, providing the manner of selection by the railway companies of granted lands. Also correspondence by interested parties in condemnation of the attitude of the department in this direction.

The second document contains the report of the Senate Committee on Public Lands favorable to the people and the Government; the decision of the Supreme Court of the United States; the letter of Hon. W. W. Dixon in criticism of the said rules and in support of the mineral land bill; and other matters of interest. I also enclose a copy of the brief of Mr. Hartman and myself, as presented to the committee during its deliberations.

While the State of Montana has been successful in obtaining a decision of the Supreme Court forever settling the legal ownership of the mineral lands of the State, and has obtained the passage through the House of Representatives the bill for their examination, classification and segregation, and the prompt favorable report of the same by the Senate committee, the great fight is yet to come and now is at hand. The hearing held Friday, the 14th, and Monday, the 17th inst., developed the fact that the railroad lobby was and is on hand, and was and is active. We will learn soon who are the friends of the railway company and who the people, but it will be unpleasant intelligence if we are beaten. It is the opinion of Senators that our cause can not be suppressed, and that we are bound to get a vote. When we do get a vote, I believe a majority of the Senators will be found disposed to examine the question and vote in accordance with an honest determination.

I am assured that we will have the benefit of the wisdom and great experience of the eminent senior Senator from Colorado, Henry M. Teller. That will be a mighty force itself. I left with Representative Monteath to be presented on the first day of the session of the next Legislature, a memorial to the U. S. Senate, praying for prompt action favorable to our bill.

I think our people ought to, by every possible expression—by letter and petition, aid us at this critical time. Petitions to the Senate from the great labor organizations, the boards of trade, chambers of commerce, State, county and municipal officers of Montana, would be of the greatest value, and, if numerously signed, almost decisive.

Congress adjourns Saturday for its holiday vacation, and Senator Power leaves for home to-night. Since the commencement of consideration before the Senate committee of our bill, Senator Power has been active, vigilant and untiring, and it is almost exclusively due to him that we obtained the only quorum that was procured by a Senate committee prior to the holidays; but it took three meetings of the committee to accomplish it.

As I said before, I believe we will pass the bill, but we want all the help we can get, especially from home.

Very respectfully, yours,

(Signed.) GEO. W. IRVIN.

Montana State Mineral Land Commissioner.

The press of the city of Washington became cognizant of the justice of our cause, and sought to place before the country a true statement of our situation. A lively tilt occurred between Senator Allen, of Nebraska, and one or two of the administration Senators, which is adverted to in the following excerpt from the Washington Post, of December 20th.

CRITICISING THE INTERIOR DEPARTMENT.

In a report just made to the Senate on a bill relating to mineral lands in Montana and Idaho there is some pretty strong language against the policy of the Interior Department and more or less intimation that the policy of that department in regard to this subject is calculated, knowingly, to help railroad corporations to the detriment of the people who are entitled to purchase the lands. This report was prefaced in the committee room by some warm words between some members of that committee. Mr. Allen, during the course of the discussion, made some statements that Mr. Berry, the chairman, construed as a reflection upon Secretary Smith, and objected. Mr. Allen retorted that when he saw fit to criticise the policy or the acts of Mr. Smith he would do so on the floor of the Senate or at any other time or place that most suited him. His condemnation of the rules of the Interior Department is said to have been most severe, and when the bill comes up in the Senate the gentleman from Nebraska will doubtless be quite caustic in his language.

The passage of the bill, it is alleged, is being opposed by the Interior Department, and there were filed with the committee and incorporated as a part of the report a number of letters bearing upon this opposition of the department that make some very interesting reading. The author of one of these letters is Hon. W. W. Dixon, member of the 52d Congress from Montana. Among other things Mr. Dixon says:

"I infer from its opposition to the bill, and from the rules it prescribes and seems to prefer to any legislation, that it (the Interior Department) would not consider itself at all enlightened or assisted by the examination and reports of sworn commissioners appointed by the President, as provided in this bill, but would prefer to act upon the statements of the hired agents of the interested railroad corporations."

After the holidays we learned of the steps taken by the railway company before the local land office in Montana toward the selection and patenting of lands within the grant under the Secretary's rules of July 9th. The gravity of the situation induced us to take some immediate action, so Mr. Hartman addressed a letter to the Hon. Commissioner, asking for a statement of the number of acres of land selected in Montana and the number of acres patented under said rules. To this letter no reply was received, but after several days' delay a chief of division came to the Capitol and called Mr. Hartman aside and informed him that it would take six weeks to ascertain what was wanted. Matters drifted along until further reports of the railway company's aggressiveness came from Montana, and we could remain passive no longer. So on the 17th of January Mr. Hartman wired the local land offices of Montana and by the following day ascertained (what the department officer told us it would take six weeks to find out) i. e., that there had been patented 303,201 acres, and selections had been made, and were then pending for patent, 1,092,654 acres. It was agreed that the attention of Congress should be called to this monstrous effort to nullify the decision of the Supreme Court, and that the truth should be told to the nation in its halls of Congress.

We consulted Hon. Henry M. Teller, Senator from Colorado (Senator Power not yet having returned from Montana), and it was agreed that Mr. Hartman

should draw resolutions for simultaneous introduction in the Senate and House requesting that Secretary of the Interior to suspend action under the rules of July 9th, until the Senate took action on the pending bill, H. R. No. 3476. The passage of this resolution in either house of Congress, the Senator said, would compel the cessation desired. The resolution was promptly drawn and the Senator obtained an opportunity and introduced it in the Senate the same day (January 18th), and Mr. Hartman the next day in the House. Senator Teller's resolution was sent to the Committee on Public Lands, as requested by him, but Mr. Hartman, through the courtesy of Speaker Crisp, got recognition for immediate consideration, whereupon he explained the provisions of the resolutions, arraigning the Interior Department, and created a profound sensation by his disclosures of the methods and spirit that animated the officials who held in their hands the destiny of Montana's progress. A vote on the resolution was prevented by the chief of the "Cuckoos," Mr. Tracey, of New York, and under the rules had to go to the Public Lands Committee for consideration and report. I here insert this day's very interesting proceedings, as published in the Record, leaving out of the copy the "Rules of July 9th," and the "Protest" of Senator Power, Congressman Hartman and myself, as these documents were inserted in my annual report and have already been given to the public.

SELECTIONS OF LANDS BY RAILROAD COMPANIES.

Mr. HARTMAN. I ask unanimous consent for the present consideration of the resolution which I send to the desk.

The Clerk read as follows:

Be it resolved by the House of Representatives of the United States, That the Secretary of the Interior be, and he is hereby, requested to suspend all action looking to the approval of selections and patenting to any railroad company of any lands selected under and by virtue of the provisions of the rules and regulations issued by the Secretary of the Interior under date of July 9, 1894, until such time as Congress may dispose of House bill 3476, now pending before the Senate, and finally settle the question of the classification of granted lands.

Mr. McRAE. What is the scope of this resolution?

Mr. HARTMAN. The purpose of the resolution is to suspend action looking to the approval of selections and the patenting of lands to a railroad company when such selections are made under the provisions of the rules and regulations issued by the Secretary of the Interior on July 9, 1894, until the bill pending in Congress has been acted upon. The bill which passed the House, I will state to the gentleman, on the 24th day of July, 1894, is now pending in the Senate, and it is the desire to have the selections of lands in the grants to the different railroad companies suspended until after action is taken upon that bill in the Senate. A duplicate of this resolution was offered in the Senate on yesterday by the Senator from Colorado (Mr. Teller). The object is to suspend these patents until the bill has been disposed of.

Mr. DINGLEY. But if it should not be disposed of at this session?

Mr. HARTMAN. Then, of course, the bill will fall by adjournment.

Dr. DINGLEY. But the resolution which the gentleman desires to have passed would then still be in force.

Mr. HARTMAN. If I can have permission, Mr. Speaker, for about two minutes, I will state the substance of this so that I think there will be no objection on the part of anybody to its enactment.

The SPEAKER. Without objection the gentleman may make a brief explanation.

Mr. HARTMAN. As this matter stands to-day the bill which is now pending in the Senate (H. R. 3476) and which passed the House on the 24th day of July last, provides for the appointment of commissioners whose duty it shall be to classify the mineral lands within the railroad land grant to the Northern Pacific Railroad Company. That bill is as yet undisposed of in the Senate, but acting under the rules adopted by the Secretary of the Interior agents were appointed to classify the lands who are themselves employes of the railroad company, and who are authorized to determine whether or not these lands are mineral or otherwise, subject only to the limitations of the rules, and to that extent it nullifies the effect of this legislation if it becomes a law.

Now, the situation is simply this: There are millions of dollars' worth of mineral lands within the grants to the Northern Pacific Railroad Company, which will practically be confiscated if this thing be permitted to exist as it is now being carried on under these regulations of the Secretary of the Interior. I will show you the difficulty. I have in my hand the rules themselves which have been issued, and they deliberately say in effect that the agents and employes of the railroad company are the ones who may examine the lands and determine their character; that is, what are mineral and what are not. The decision of the Supreme Court of the United States in the case of Barden vs. the Railroad Company held that the company was not entitled to a foot of the lands, and yet when the only question left to be determined is what are mineral lands and what are not, the Secretary of the Interior goes on and authorizes the appointment of the agents or employes of the railroad company, one of the contestants to the matter, to determine that vital question.

I come to you, therefore, in the interests of the people desiring to occupy public lands, begging you to make it possible for the miners of that vast region not to have the burden of proof thrown upon them in this way. Let me call your attention to a fact. The agents and employes of the railroad company make so-called examinations of the lands and report it to the agent—the land agent of the company—and he makes an affidavit in which he states that to the best of his knowledge and belief these are non-mineral lands. The bill which is pending in the senate met with a favorable report from the Senate committee, and passed this house on the 24th day of July, 1893, received the indorsement and approval of the Secretary of the Interior, as well as the Commissioner of the General Land Office, but on the 30th day of July of the following year the good bill of the previous year had by some means become an infamous measure, and in lieu thereof we have the agents and employes of the railroad company appointed by the rules of July 9, 1894, to determine the vital fact whether or not these lands shall go to the company or not.

I call your attention to one of the provisions of the rules in question, which provides for the examination after it is made and the affidavits taken in reference to it; it is then returned to the register and receiver of the land office in which the land is situated, and then a notice is published in the papers that the list has been filed, and that any one interested therein is permitted to come to the land office and examine it. Gentlemen, I know of my own knowledge and others here know the facts, that there are many mining camps 150, 200 and even 300 miles from the local land office, and hence these men, if they are fortunate enough to see the published notice, are then permitted to go that distance to the land office and there examine the lists, and if, from their descrip-

tion, they are able to know whether or not they are mineral lands, they can then file the protest within sixty days. If not, they are compelled to go back again to their camps and attempt to identify the lands and determine whether they are mineral or not, and then make another trip to the land office.

What do you think of this proposition: You have a suit in court against me to recover certain lands. The question of the recovery is based on the determination of the question as to whether the lands are mineral or not. If they are non-mineral, I do not own them; if they are mineral lands, I do; and yet the court, sitting to determine that question, deliberately appoints me — one of the litigants to the suit—to determine the vital fact on which the very controversy itself is pending.

I want to ask any gentleman here on this floor if that is equity, if it is justice, if it is fairness on the part of the Interior Department to do this thing.

Mr. McRAE. I should like to ask the gentleman if the purpose of introducing this resolution is to make a tirade against the Secretary of the Interior or to pass it.

Mr. HARTMAN. That is not the purpose, sir.

Mr. McRAE. Then why not let us proceed to the consideration of it, instead of talking about it.

Mr. HARTMAN. I am getting to the consideration of it. I am giving you the facts.

On the 30th day of July, 1894, this bill, which had received the approval of the Secretary of the Interior and of the Commissioner of the General Land Office, was repudiated by the letters which I hold in my hand.

Why, Mr. Speaker, here you have the whole status. This House thought it was a good bill, and it passed, and now it has been supplanted and has been repudiated by the Secretary and his Commissioner, and I want now——

Mr. SMITH, of Arizona. If I may interrupt the gentleman, he says that the agents of the railroad company have been appointed to settle the question in controversy. Now, what is exactly the purpose of this resolution?

Mr. HARTMAN. The purpose of my resolution, Mr. Speaker, is to suspend the operation of this code of rules of July 9 until legislation now pending in the Senate of the United States settling the question so far as the Northern Pacific grant is concerned, may be determined.

I undertake to say, Mr. Speaker, that the issuance of that code of rules, thus nullifying the effect of the act which passed this House on July 24, was not a respectful act to this Congress. We passed a bill and the Secretary says "Although I approved that bill once, I now disapprove it, and for the purposes of emasculating the life out of it I will issue a code of rules," which he has done here, and which, with the permission of the House, I will print in my remarks.

This code of rules absolutely turns over to the agents and employes of the railroad company the right to decide a vital fact, and that is whether these lands are mineral or non-mineral lands; and this right is only limited by the provisions of the rule which actually furnishes no limitation whatever.

Mr. HULICK. Has anything been done in executing this order?

Mr. HARTMAN. Yes; and right here I want to say to you that I telegraphed yesterday to the respective United States Land Offices which are affected here. I sent to each one the following message:

Wire immediately number of acres of land selected by Northern Pacific in your land district under rules of July 9, 1894; also the amount patented.

That was addressed to the registers and receivers of the land offices at Bozeman, Helena and Missoula, Mont. Here are the answers:

BOZEMAN, MONT., Jan. 18, 1895.

To Hon. C. S. Hartman.

House of Representatives, Washington, D. C.:

Railroad patent No. 1 contains 303,201 acres; amount of land advertised in this land district for patent, 932,361 acres.

C. P. BLAKELY, Register.

Mr. HAUGEN. About one-third of the whole in one deed?

Mr. HARTMAN. Yes. Here are the other answers:

MISSOULA, MONT., Jan. 18, 1895.

To. Hon. Charles S. Hartman, Washington, D. C.:

The Northern Pacific has applied for patent for 20,293 acres under circular July 9, 1894. No patents issued.

JOHN M. EVANS, Register.

HELENA, MONT., Jan. 18, 1895.

To. Hon. Charles S. Hartman, Washington, D. C.:

Northern Pacific applied for patent for 140,000 acres in this district. None patented.

W. E. COX, Register.

Now, Mr. Speaker, there is a grand total now pending of 1,092,000 acres of land which have been selected by the railroad company's agents, the men appointed by the Interior Department to decide the contesting claims for these mineral lands; and I want to know whether this House is going to put the seal of its approval upon such an outrage as this.

Why, Mr. Speaker, the idea of appointing one of the litigants, one of the parties to a law suit, to determine the facts upon which the law suit turns, is an outrage, and I care not upon whom it reflects, it ought to be denounced by this House.

Is it right, after we have passed this bill—is it right after the Supreme Court has decided that the mineral lands do not belong to the railroad company—that we should be compelled to have that nullified by the Secretary of the Interior and the Commissioner of the General Land Office?

Mr. HULICK. Have any rights become vested?

Mr. HARTMAN. Sir, they are becoming vested; and already more than 300,000 acres have been patented under this rule. And, Mr. Speaker, another fact, on the 7th day of last August, a protest, which I will put in my remarks.

This protest was prepared by the Senator from Montana (Mr. Power), Geo. W. Irvin, our mineral land commissioner, and myself, asking that these rules be abrogated, for the reasons set forth; and I say to this House here and now that we have never been accorded the decent courtesy of an acknowledgment of the receipt of that letter of protest; and in order to be fair with the Secretary, on the 12th of September last I addressed a letter to him ,calling attention to the protest of August 7, and I have never had the courtesy of a reply to that. Let us have the facts, no matter who is interfered with by them.

Sir, the Secretary here absolutely provides in this code of rules that any land not within a radius of six miles of some known mineral claim and location, but within the grant, shall be deemed to be agricultural land and to be patented to the railroad company. Gentlemen, was there ever such an outrage perpetrated on any people as that? Every man familiar with the mining industry—and I appeal to members from the mining regions—every one of you know that new mining claims are discovered every year which are more than six miles from some known mining claim. But, sir, under the provisions of this infamous code, it makes no difference whether mineral or non-mineral, it

is the duty of the department to patent that lands to the railroads as non-mineral lands. I appeal to this House whether you are going to put the seal of your approval on a thing of this kind.

The SPEAKER. The Chair must put the question of consent. Is there any obection to the consideration of this resolution?

Mr. SICKLES. I would like to hear the resolution reported.

The SPEAKER. The clerk will again report the resolution.

The resolution was again read.

Mr. SICKLES. I hope it will be passed. It is a good resolution and will do no harm.

The SPEAKER. Is there any objection to the consideration of the resolution?

Mr. MADDOX. I object.

The SPEAKER. The gentleman from Georgia objects.

Mr. HARTMAN. I ask that it be referred to the Committee on Public Lands.

The SPEAKER. The resolution will be referred to the Committee on Public Lands.

Mr. HARTMAN. Mr. Speaker, may I have recognition to move that that resolution be now considered?

The SPEAKER. It is not in order under the rules. It requires unanimous consent.

Subsequently.

The SPEAKER. The Chair understands the gentleman from Georgia withdraws his objection.

Mr. MADDOX. I withdraw the objection. I objected to the consideration of the resolution under a misapprehension.

The SPEAKER. Is there any further objection to the consideration of this resolution?

Mr. SPRINGER. I desire to ask the gentleman a question, and that is: as to whether this resolution goes beyond this session or not?

Mr. HARTMAN. Pending the passage of the bill.

Mr. SPRINGER. But suppose the bill does not pass at this session?

Mr. HARTMAN. If the bill does not pass the matters are left in statu quo.

Mr. SPRINGER. Does this limit this to this present session of Congress?

Mr. McCREARY, of Kentucky. I ask unanimous consent for the reading of the resolution again.

The SPEAKER. The resolution will be reported for the third time.

The resolution was again reported.

The SPEAKER. Is there any objection to the consideration of this resolution?

Mr. TRACEY. I object.

The SPEAKER. Obection is made. The resolution will be referred to the Committee on Public Lands.

On Monday, the 21st, Senator Teller appeared before the Senate Committee at its regular weekly meeting, and Congressman Hartman appeared before the House committee. Only eight members of the House Committee were present, but that number was a quorum, and by a vote of five to three it was agreed to favorably report the resolution. The Senate committee took no definite action

on the resolution on that day, but carefully considered the same. In both committees there was a disposition to recommend the resolution, but in each, the House committee in particular, its favorable report seemed to some it would be a severe reflection upon the Interior Department, and several days' delay ensued.

On Tuesday, the 22d, we were made glad by learning that the Secretary, anticipating the action of the Senate or the House, had issued an order suspending "Department Rules of July 9." So Senator Power, having arrived that day, set about getting the resolution out of his committee and before the Senate. This he brought about the next day, but he withheld the report at the request of administration Senators, and upon the assurance that the Secretary's order of suspension was made in good faith.

On Saturday, the 25th, a singular situation presented itself. A bare quorum had before recommended the resolution for passage; now, by a special call of the chairman, the full committee of the House, fifteen in number, were present, and the resolution was again brought up for consideration, and a substitute for the original was adopted and reported to the House as a minority report, signed by all of the members except those who had signed the majority report and one absentee, thus presenting the unique proposition of five members making a majority report and nine a minority.

The report and the minority report omitting documents heretofore published is as follows;

RAILWAY LAND SELECTIONS ON NORTHERN PACIFIC RAILWAY.

January 25, 1895.—Referred to the House Calendar and ordered to be printed.

Mr. Lacey, from the Committee on Public Lands, submitted the following

REPORT:

(To accompany Mis. Doc. 59.)

The Committee on the Public Lands, to whom was referred House resolution requesting the Secretary of the Interior to suspend action looking to the approval of selections and patenting railway lands until after final action upon H. R. 3476, have considered the same and report it back with amendments as follows:

Amend by striking out at end of resolution the words, "and finally settle the question of the classification of granted lands," and insert "Provided, Said suspension shall not extend beyond March fourth, eighteen hundred and ninety-five."

On the 24th of July, 1894, H. R. 3476 passed the House of Representatives on the unanimous report of the Committee on the Public Lands. The bill provides a method of ascertaining what lands within the limits of the Northern Pacific Railway grants are mineral, and therefore not embraced in such grants.

The bill was favorably reported to the Senate by the Senate Committee on Public Lands by Report No. 726. The final action of the House and the favorable action of the Senate committee are circumstances that ought to be considered by the Land Office in the examination and patenting of these lands.

The land grants of this railway pass through regions rich in minerals, and the patenting of mineral lands to corporations or individuals, thus withdrawing such lands from public prospecting under the mineral laws, would do a great injury to the States in which such lands are situated. It is important that patents should be issued as soon as reasonably practicable on agricultural

lands for the adjustment of these railway land grants, but, on the other hand, all practicable precautions should be taken to prevent the erroneous patenting of mineral lands.

On the 9th of July, 1894, the Land Office issued regulations in regard to such selections which are liable to result in the patenting of valuable mineral lands as agricultural lands.

This circular was issued prior to the passage of H. R. 3476 by the House of Representatives, and under the circular proceedings are pending to patent large areas of lands in the mountains of Montana, which lands are in the mineral regions of that State. The lands are generally covered by heavy snow at present, and will remain so during the winter, so that it will not be practicable to examine and pass upon the mineral character of the lands proposed to be patented in time to avoid mistakes.

The lands have been examined by the railway company's agents and ex parte showing made that they are not mineral, and the necessary notices published preliminary to patenting them. But this examination by the agents of the interested party might easily lead to mistakes, or might be subject to abuse. People along the lines of the railways insist that the company is attempting to secure patents on large tracts, including valuable mineral lands.

Whether this contention is well founded or not it would not be unjust to the company to suspend proceedings until H. R. 3475 shall have been finally disposed of, as it must be acted on before March 4, 1895.

Your committee invite particular attention to the Senate report, which sets out reasons for the passage of the bill, and as showing that the regulations of July 9, 1894, are not sufficient to protect the Government and public from imposition in the selection of these lands. The decision of the United States Supreme Court in Boyce vs. Northern Pacific Railway Company renders it necessary that the question as to whether these lands are mineral or not should be settled at as early a date as practicable. The questions must necessarily be adjusted before patents issue.

It is within the power of the Interior Department to suspend these proceedings until Congress shall have enacted a law to protect all parties, and we think the bill passed by the House and favorably reported upon the Senate Calendar would accomplish the purpose intended.

Your committee recommend the passage of the resolution as amended.

(The regulations of the Land Office of July 9, 1894, will be found in Congressional Record, proceedings of January 19, 1895, on p. 1251.)

VIEWS OF THE MINORITY.

The undersigned members of the Committee on Public Lands would respectfully recommend that the resolution as reported should not be adopted, for the reasons set out in the following communication:

DEPARTMENT OF THE INTERIOR,

Washington, Jan. 23, 1895.

Sir: In response to your verbal request I have the honor to inclose a copy of a report from the Commissioner of the General Land Office relative to the rules and regulations issued by this department on July 9, 1894, upon the subject of the determination of the mineral or non-mineral character of lands listed and selected under Congressional grants to railroads.

In addition to this report I wish to add a few facts: For a number of months prior to the decision rendered by the Supreme Court of the United States, on the 26th of May, 1894, in the Barden case (U. S. Reports, 154, p. 288)

no patents had been issued upon land grants to railroads in mineral sections. After this decision I appointed a board, consisting of the Commissioner of the General Land Office, the director of the Geological Survey, and the chief law clerk of the Assistant Attorney-General's office, to consider and report upon the advisability of recommending legislation which would place upon the Geological Survey the duty of investigating and determining the mineral or non-mineral character of the lands selected, as above referred to. Inclosed I hand you a copy of the report, under date of June 20, 1894, made by this board. From this report the conclusion was reached that an examination of the thoroughness contemplated would be too expensive in view of the limited value of the lands.

Since July 9, 1894, when the rules were adopted for these examinations, selections of lands have been patented to the railroads as non-mineral, and I am advised by the Commissioner of the General Land Office that no suggestion has come to that bureau that any of the lands thus patented are mineral lands. At the time these rules were approved the impression had been created that little probability existed of the passage by Congress of any law embracing a plan for the determination of the mineral or non-mineral character of such lands. When, however, Congress met in December, and the fact was brought to the attention of the department that an effort was being made in the Senate to enact legislation upon this subject, with a probability of success, the patenting of additional lists, where the question of their mineral or non-mineral character was involved, was suspended by the Land Office, and since the latter part of December no further consideration by that bureau has been given to the issuing of any such patents.

From the earliest date when railroad selections have been made under land grants in mineral regions it has been the practice of the department to require that the grantee should furnish evidence that the lands selected were non-mineral, and the burden of establishing the fact has been imposed upon the grantee.

As early as 1868 the Commissioner of the General Land Office, under the approval of the then Secretary of the Interior, prescribed rules for making this proof by the railroad companies making selections of lands. It required that—

"In every case reported from the district land officers of selections made under the acts of 1862 and 1864 for the Pacific Railroad, the agent of the company in the first instance is required to state in his affidavit that the selections are not interdicted, mineral or reserved lands, and are of the character contemplated by the grant. Upon the filing of this list with such affidavits attached, it is made the duty of registers and receivers to certify to the correctness of the selections in the particulars mentioned and in other respects. They subsequently undergo scrutiny in this office, are tested by our plats, and by all the data on our files, sufficient time elapsing after the selections are made for the presentation of any objections to the department before final action is taken."

The first portion of the second division of rule two, promulgated on July 9, 1894, is substantially a copy of the rule adopted in 1868. It has been charged that the following language in the rules promulgated on July 9, 1894, turned over for decision to the railroad company the mineral character of lands within its grant, to-wit:

"Upon receipt of said list you will cause it to be examined and a clear list to be prepared of all lands embraced therein that are not within a radius of six miles of any mineral entry,, claim, or location, which list shall be transmitted to the department for its approval."

Such was not the intention, nor is it the meaning of that portion of the rule quoted. The former rules of the department are still in force, and those promulgated in 1894 merely amend and change the former so far only as the two conflict.

The preliminary proof required by the rules of 1868 and of 1894 to be made by the agent of a railroad company brings the lists before the department, and when this is done the department takes notice of the selections and proceeds to investigate the correctness thereof. When the lists are before the department the old rule, which has not been rejected, requires that "the lists subsequently undergo scrutiny in this office, are tested by our plats and all the data on our files, sufficient time elapsing after the selections are made for the presentation of any objections to the department before final action is taken."

Under this rule and the practice of the department any suggestions that any lands in lists are mineral causes an investigation to be made as to the character of the lands, and wherever it has been ascertained that any such lands are mineral the lists to that extent have been rejected.

Thus it will be seen that the decision of this question is not left to the agents of railroad companies touching lands "not within a radius of six miles of any mineral entry, claim or location."

The remainder of the rules of July 9, 1894, are applicable to lands within a radius of six miles of any mineral entry or location, and enable the department to make a more thorough investigation of the character of such lands than was prescribed by the old rules; and a careful reading of the old rules in connection with the new will show that such was the purpose of the new rules, and as the new rules require more care and thoroughness of examination to ascertain the character of such lands than has ever before been practiced by the department, the chances of making a mistake in this regard are very much lessened.

I deem it proper, also, to call your attention to the limited extent of the application of House bill 3476.

Very respectfully,

HOKE SMITH, Secretary.

Hon. T. C. McRae,
Chairman of the Committee on Public Lands,
House of Representatives.

DEPARTMENT OF THE INTERIOR,
Washington, June 20, 1894.

Sir: In response to your verbal instructions to investigate and report upon the probable cost of determining the mineral or agricultural character of lands granted to the various railroad companies in the United States, said determination to be made by the Geological Survey, we have the honor to report as follows:

There has been granted to the different railroad companies the following approximate number of acres of land:

Atlantic and Pacific R. R.	49,000,000
Central Pacific R. R.	12,000,000
Northern Pacific R. R.	42,000,000
Oregon and California R. R.	4,000,000
Southern Pacific R. R.	11,000,000
Union Pacific R. R.	20,000,000
Total	138,000,000

Of this area there has been patented about 50,000,000 acres, leaving a balance

of 88,000,000 acres to be adjusted to the different companies. Of this amount the estimated acreage in mineral states and territories unadjudicated is 65,000,000, or about 100,000 square miles.

The cost of an examination by the Geological Survey to determine the mineral or agricultural nature of these lands is estimated to be from $5 to $15 per square mile, and an appropriation of from $500,000 to $1,000,000 would, therefore, be required for the purpose.

Your board have the honor to submit that they deem it inadvisable at the present time to attempt to secure an appropriaion of so large an amount for the purposes above referred to. The Commissioner of the General Land Office will prepare and submit certain rules and regulations for the approval of the department, covering the question of the determination of such lands, as it is the opinion of the Commissioner that rules and regulations can be promulgated under which the mineral lands of the Government may be protected, and whereby their mineral or agricultural character can be determined, so that the railroad companies may select their indemnity lands in lieu of mineral lands.

Respectfully submitted,

E. F. BEST,
CHAS. D. WALCOTT,
S. W. LAMOREAUX,
Board.

The Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., Jan. —, 1895.

Sir: My attention has been called to a speech made on the 19th inst. in the House of Representatives by the Honorable Charles S. Hartman in support of a resolution introduced by him, proposing to request the Secretary of the Interior to suspend all action looking to the patenting of lands to any railroad company by virtue of the rules and regulations issued by the department July 9, 1894 (19 L. D., 21), until such time as House bill 3476, now pending in the Senate, may be disposed of; and in connection therewith I desire to invite your attention to the following:

The rules and regulations embodied in said circular of July 9, 1894, were issued for the purpose of determining whether lands listed or selected under Congressional grants of non-mineral lands were mineral or non-mineral.

When I assumed charge of this office I found pending herein some thirty millions of acres of lands listed or selected under grants by Congress to aid in the construction of railroads, and no specific regulations for determining their mineral or non-mineral character. Prior to the issuance of said circular, and until March 3, 1893, it was the practice of the agent of the company claiming the lands, when listing or selecting the same, to make affidavit "that the lands are vacant, unappropriated, and not interdicted mineral or reserved lands," and it has been the practice of the department, if the lands were not returned as mineral, and the records of this office did not show any mineral claims thereto, to approve any lists submitted by this office having a certificate appended to that effect.

On March 3, 1893 (16 L. D., 262), Secretary Noble returned two lists of lands which had been previously submitted, stating that the only showing made by the company claiming them was the affidavit aforesaid by its agent, and that in view of the fact that a great majority of the lands were in townships in which there are known mineral claims, "I do not think it would be safe to

approve these lists without further investigation by the United States, or specific showing on the part of the company as to their non-mineral character."

In the disposal of lands under all the laws of Congress where a non-mineral showing has been required, the affidavit of the claimant as to its non-mineral character has been accepted. In fact, no other non-mineral showing has been required, and the only requirement of the department in the matter of such showing, found in the letter of Secretary Noble, of March 3, 1893, aforesaid, recognizes the right of the company to specifically show the non-mineral character of the lands.

Now, the circular of July 9, 1894, complained of by Mr. Hartman, requires much more than this. It not only requires that the agents of the company, in listing or selecting lands, shall attach to each list presented an affidavit that the lands have been carefully examined by the agents and employes of the company, as to their mineral or agricultural character, and that to the best of his knowledge and belief none of them are mineral lands, but after the list is received at this office it is required that it be further carefully examined, and if any tract or tracts described be found to be within a radius of six miles of any mineral entry, claim or location, that such tract or tracts be made into a list and returned to the local land office of the district wherein they are situated, with instructions that they publish in such newspaper as this office might designate, a statement of the company's claim; that the lists are open to the public inspection, and that the local officers for sixty days will receive protests or contests against the claim of the company, on the ground that the land is more valuable for mineral than agricultural purposes. And further, in regard to any lands protested, contested or claimed to be mineral, or concerning which any suggestion should be made, or report by the register and receiver as to their mineral chracter, the local officers were required to order hearings, after due notice to the parties giving the information, and to the railroad company.

The showing as to the non-mineral character of the lands prescribed by the circular of July 9, 1894, it will be readily seen, are much greater than were ever before required.

As before stated, the grantee companies had pending before this office large quantities of lands listed and selected, and it is the duty of this office to dispose of such lists in a suitable manner; and in order to do so it was necessary to determine the question as to the mineral character of the lands.

There was no guide in the form of rules or regulations for making such determination, and after mature deliberation and consideration of the matter, the rules and regulations embodied in the circular of July 9, 1894, were adopted as the best means available to the department for the purpose, it having no authority to appoint commissioners to examine and classify the lands. These rules apply to all the States, and appear to be working satisfactorily in other States than Montana, as no other complaint or protest has been received.

If Congress should pass a law prescribing the manner of determining whether lands claimed under its grants are mineral or non-mineral in character, the department would be relieved of the responsiblity of making rules and regulations for the purpose, and would gladly follow it; but under the law, as it at present exists, this duty, as stated in the United States Supreme Court decision in the case of Richard P. Barden vs. Northern Pacific Railroad Company, rendered May 26, 1894, devolves upon the department. Its business must be transacted, and in issuing the circular of July 9, 1894, it did what it believed was the best within its power to transact its business and at the same time prevent the issue of patents to railroad companies for mineral lands.

Reference is made to the fact that this office approved of Senate bill 434 and House bill 3476, which provides for the appointment of commissioners to classify the lands in its report of August 23, and October, 1893, and this is true; but after the Supreme Court decision in the case of Barden (supra), wherein it was held that the department had full power to determine the character of the land, this office, on July 30, 1894, in another report on Senate bill 434, which is substantially the same as House bill 3476, stated that, in its opinion, no further legislation can be had that will satisfactorily meet all the conditions arising in the adjustment of the grants, that the work of the commissioners under the bill would be, at best, but superficial, that it would entail enormous expense, and would delay the adjustment for years. That in its opinion the proposed commission could not satisfactorily accomplish the purpose for which it was created, and recommended earnestly that the bill be not enacted.

The following statement shows the condition of the Northern Pacific Railroad grant in Montana:

Number of acres patented		303,201.55
Number of acres advertised		1,184,654.59
Number of acres selected:		
Place limits	4,143,056.38	
Indemnity limits	855,216.99	
		4,998,273.37
Number of acres entitled to if grant is fully satisfied (estimated)		18,931,200.00

After notice was given in the Senate that action might soon be taken on bill 434 this office suspended all action on Montana and Idaho land, and the suspension will be maintained until that bill is disposed of.

Very respectfully,

S. W. LAMOREAUX, Commissioner.

The Secretary of the Interior.

They recommended the adoption of the following substitute, which is general in character:

Resolved, that the Secretary of the Interior be, and he hereby is, requested to inform the House of Representatives by land districts, how much land has been patented to the land-grant railroad companies since May 26, 1894, and what examination was made to determine the non-mineral character of the lands; and whether any of the lands thus patented were before, or have been since, claimed as mineral, and also to furnish a list of pending selections awaiting approval.

Resolved, That the Secretary of the Interior be requested to suspend action on all selections of said companies now pending until the expiration of this Congress, unless legislation providing for the segregation and classification of the mineral lands within the limits of said grants shall be enacted previous hereto.

THOS. C. McRAE.
O. M. HALL.
A. C. LATIMER.
ROBERT NEILL.
W. T. CRAWFORD.
D. D. HARE.
PETER. J. SOMERS.
GEO. F. KRIBBS.
M. A. SMITH.

Pending the action of Congress on our proposition to suspend action as stated, the situation in Montana had become so critical that Mr. Hartman and I prepared a convenient arrangement of all the facts in the case, and determined to visit the President in behalf of justice to the people of Montana. In pursuance of this plan we wrote a letter to Private Secretary Thurber, asking that he name an appointment for us. We coached ourselves in the etiquette that we imagined was requisite in approaching the august presence, and had just comfortably worn off the terror accompanying the contemplation of such temerity when we learned that the order of the Secretary had rendered it unnecessary. Thus the President was the loser of an interview that might, incidentally, have saved him from many subsequent errors of administration.

On January 21st, Mr. Thomas F. Oakes, one of the receivers of the Northern Pacific Railway Company, and lately its president, appeared at the Capital, accompanied by General Britton, of the firm of Britton & Grey, attorneys for said company, and invited Senator Power and Mr. Hartman to a consultation. When the object of their visit became understood, both gentlemen declined to proceed without the presence of the State Commissioner. So an appointment was arranged for the next day, at which all were present. Thereupon General Britton stated for the Company, Mr. Oakes and himself that they desired to withdraw all opposition to the passage of the Mineral Land Bill, provided that several amendments could be had as to its details. They acknowledged that the principle of the bill was correct and ought to remain; that it ought to have been accepted by their company four years before, and that it possibly would have been had the present management prevailed. They stated that the rules of July 9th were not of their constructing, but that an ambitious land department belonging to their company saw an opportunity under those rules to make a record, and proceeded by their activity to place the company at odds with the people of Montana, whereas the Northern Pacific Railway Company was not engaged in mining or mining enterprises, and did not want mining land, but were in the business of common carriers, and desired to receive their share of the transportation of Montana. They had found that they were losing business on account of their attitude, and now sought to retrieve the ground they had lost. We thought it strange that the managers of this great corporation should have waited for this enlightenment through so many years, and only found it out after Mr. Hartman, by his eloquence in Congress, had made the mineral land measure one of the most prominent enactments of the session, and also until it was found that no influence would avail to turn Senator Power to the right or to the left. At this time we knew we had as antagonists Senators Vilas, Pasco, Gorman, Mitchell and Stewart, the first two representing the Interior Department, and the last two the Southern Pacific Railway Company. Besides, we believed the Atlantic and Pacific and the Union Pacific Railroad Companies were (as we found out afterward) represented against us under cover. Thus, while we were progressing step by step, and gradually getting to a position where we hoped to force our bill to a passage, we were not unmindful of the fact that a combination of a half dozen Senators might be able to prevent affirmative action. So it was thought a good stroke of policy if we could isolate the Northern Pacific influence from the other antagonisms.

General Britton presented about twenty amendments, which were considered and all but two rejected; however, it was plain that with modifications some of the others were unobjectionable, and some of real benefit to the execution of the measure. The first amendment to be accepted was a provision for rules by the Secretary of the Interior prescribing a hearing and deter-

mination of all cases wherein the classification should be disapproved by the said Secretary, or where the same might be invalidated for fraud. The second simply provided that annually the Secretary should make an estimate of the amount of appropriation required for the ensuing year, in that manner rendering it unnecessary to make an annual fight for an appropriation.

The other side insisted in adding to our provision for the appointment of commissioners under the bill the following, to-wit: "Two of said appointments in each district shall be made upon a nomination of a majority of Senators and Representatives in Congress from each State, respectively, and one on the nomination of the Northern Pacific Railroad Company, or its legal representatives." It was stated to General Britton and Mr. Oakes that the Democrats in Congress would never let such an amendment go through, but they urged us to let them try it. We had only asked in the original bill the appointment of one from each district, and concluded that this proposition would give us two, so we determined to let them temporarily insert their amendment, and, as predicted, it did not last long. We also agreed to the term of four years in which to complete the classification, that being the usual tenure of a government office, and that time being deemed ample.

The other parties offered the following amendment: "And to enable the Northern Pacific Railroad Company to select the indemnity for mineral lands as provided in its charter, the Surveyor-General for said State or States shall compute the area of said unsurveyed tract or tracts so classified as mineral." To this amendment we offered no objection, and indeed saw much justice in it, but expressed our belief that Congress would look upon it as an effort to confirm some alleged right that did not exist; we, therefore, assumed no responsibility relative to it. This amendment remained a part of the bill clear through the struggle and up to its consideration by the conference committee, but it promptly wiped it out, much to the disgust of the railroad people.

The Hartman bill contained this provision: "That all lands shall be classified and taken to be mineral lands under this act which prior to the passage of this act shall have been located and patented as mineral lands, or which have or probably will have a market value by reason of the minerals which they contain, or which show such indications of valuable mineral deposits as would induce a miner to spend his time or money upon them with reasonable expectation of finding mineral in paying quantities, or which from their geological formation or their propinquity or relation to known mineral lands, are or probably will be valuable for the minerals therein; and all of these matters shall be considered by the commissioners in determining the mineral or non-mineral character of such lands, and in classifying the same."

In lieu of this paragraph the following was offered: "That all lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation and purchase under the provisions of the United States mining laws, and the commissioners in making classification hereinafter provided for shall take into consideration the minerals discovered or developed on such land."

Over these clauses was the main struggle, and a number of hours were spent in trying to construct a definition of mineral land upon which we could all stand. The other parties were determined to eliminate the word "propinquity," and our side were equally desirous of retaining it, or to get a word or words of equal import, and as a result every one tried his hand in drawing an adequate description."

Pending this discussion, Senator Teller visited us in the Public Lands committee room, where our conference was being held, and assured us that an

agreement would mean the prompt passage of the bill as amended, so with this encouragement we determined to accept the amendment proposed, provided they would allow us to extend the provisions to be considered in the classification.

Finally our conference ended in the following being agreed upon, subject, however, to a further consultation among ourselves, to-wit:

Section 3. Strike out from line 1 down to word "same" in line 14, and insert: "That all said lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation and purchase under the provisions of the United States mining laws, and the commissioners in making the classification hereinafter provided for shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probabilities of such land containing valuable mineral deposits because of its said formation, location or character."

This being disposed of left only a few changes by interlineation to provide for classification by legal subdivisions instead of by sections, as we had it.

The conference adjourned until the following morning, when we were to give an answer as to our acceptance or rejection of the amendments. That evening Mr. Hartman and I visited Senator Teller at his residence and submitted to him both paragraphs descriptive of mineral land, side by side. He examined them critically and gave it as his opinion that the one was as good as the other. He said the word "adjacent" as used by us was as good or better than the word "propinquity"; that he, as Secretary of the Interior, had decided in the Union Pacific Railway contention relative to using timber from the public lands in construction that the word "adjacent" meant such lands as were convenient to the railroad, and not adjoining; and that United States Circuit Judge Hallet had overruled his decision, and that the Circuit Court in turn had been overruled by the Supreme Court of the United States. Therefore, the word "adjacent" had had a judicial interpretation, and the word "propinquity" yet remained to be explored. We parted with the latter word with regret, because each wise Senator who had noticed it had contracted his brows, corrugated his forehead, frowned and looked grave; every clerk who had occasion to pronounce it had staggered, stumbled and finally fell prone, and the railroad people shook as with an attack of ague whenever it was uttered in their presence. But the best of friends must part, so we at last yielded the word "propinquity."

On Saturday (the following day) the conference was renewed, and it was agreed that both parties would work for the passage of the bill, and that both were to accept its provisions when it came out of the conference committee, whether it suited or otherwise. It was further agreed that it would be best to offer the whole to the Senate as an amended bill, rather than take the chances of having the amendments discussed in open Senate.

First of all, it was thought best to submit it to the Secretary of the Interior with the hope of getting his approval. This was undertaken by General Britton, and some days passed without further action.

At last the Secretary was heard from, disapproving all of the amendments and suggesting a number of new ones, which were made to conform to the "Rules of July 9th." Of course, these suggestions of his were negatived by all of the parties interested.

As a result of our labors, we were pleased to learn that the Honorable Commissioner of the General Land Office had examined the amended bill and would recommend its passage.

On Monday, January 23d, H. R. 3476, as amended, was sent to the Public Lands Committee, where all of the agreements had to be subjected to the scrutiny, criticism and opposition of Senators Vilas and Pasco; the other Senators of the committee accepting the results of our labors as final. The only result was to strike out the amendment providing for the nomination of the commissioners by the congressional delegation, and by the Northern Pacific Railroad; but in lieu of it, Mr. Dubois obtained a provision that two commissioners in each district should be residents thereof. It now seemed that the whole committee on public lands were willing to let the amended measure go through.

The spirit of the people in the States of Montana and Idaho began gradually to be aroused. The first signal meeting, later to be followed by a number of others, occurred at Wardner, Idaho, on Jan. 10th, an account of which we received January 27th, through the medium of the Anaconda Standard. The resolutions there adopted were of a character to attract attention, and were valuable to us beyond estimate, endorsed as they were by Governor McConnell. We made great use of the printed copies we received to fortify our contentions and found them very effective, indeed. They were of such importance that I take the liberty of giving them in full below, together with the letter of Governor McConnell transmitting them to the Legislature of his State.

MINERS ARE INDIGNANT.

Idaho Miners Protest Against the Mineral Land Steal.

BOISE, Jan. 22.—Governor McConnell has transmitted to the Legislature a copy of the resolutions recently adopted by the miners of Shoshone county protesting against the effort of the Northern Pacific to steal mineral lands in north Idaho, accompanied by a letter in which he urges the Legislature to take immediate action in the premises.

The resolutions, which were adopted at a mass meeting of citizens at Wardner and vicinity, on Jan. 10, are as follows:

Whereas, The Northern Pacific Railroad Company, in collusion with Hoke Smith, Secretary of the Interior, and aided by the machinery of the Interior Department, is engaged in an iniquitous attempt to steal the mineral lands from the people to whom they rightfully belong, as is evidenced by the following facts:

First—That on the request of the Commissioner of the General Land Office, July 30, 1894, the bill then pending in the United States Senate to appoint a government commissioner to examine and classify the mineral lands was not passed; that nearly a year before, viz., in August, 1893, this same commissioner recommended the passage of this bill; that the sudden and suspicious change of front was met by a vigorous protest from Senator Power, Congressman Hartman and State Land Commissioner Irvin, of Montana, who unite in saying: "When, after infinite labor and organization the people have had their day in the highest court of the land, and that court has declared in unmistakable language that they and the United States have as a right everything that was claimed, and in the face of this declaration an executive department of the Government goes to work and formulates rules and regulations so directly contrary to its spirit as to, in effect, nullify it; it is then time to enact a measure so plain that nothing will be left for a complaisant ministerial officer to mistake or pervert."

Second—That the Interior Department and the railroad company are guilty of collusion and sharp practice is plain from the following facts: The rules

and regulations prescribed by the department were issued in July, 1894, but the railroad company waited until the severe winter months of December and January following to take the sixty days necessary under the rules. When it is recalled that the mineral claimants are compelled by these rules to prove mineral on each forty acres of every section listed by the railroad company in order to defeat their obtaining patents; when it is known that the burden of proof and expense is thrown on the mineral claimants, by compelling them to ascertain the location of claims and holdings with reference to section lines and subdivisions thereof; when it is realized that in the greater number of instances it is a physical impossibility, owing to deep snow and stormy weather, to determine the aforesaid section lines and subdivisions at this season of the year, the hardship and expense to be inflicted on mineral land owners becomes at once apparent. We would also direct attention to the fact that the considerate act of Congress relieving the owners of claims from assessment work for the year 1894, on account of extreme financial distress, will become a hollow mockery if the railroad company is permitted to accomplish its designs.

The conditions which prevailed then still exist. In view of the foregoing facts we ask the Legislature of Idaho to memoralize Congress for immediate passage of the Hartman mineral land bill.

Also that the Legislature authorize the State's attorney to at once cooperate with Montana officials in taking the necessary steps restraining the Interior Department from issuing any patents for mineral land to the Northern Pacific until Congress shall have determined what is mineral land and what is not.

W. F. GODDARD,
JAMES LYLE,
HARRY L. DAY,
Committee.

The following is a copy of Governor McConnell's letter of transmissal:

EXECUTIVE OFFICE, Jan. 19.

Mr. President, Mr. Speaker and Members of the Idaho Legislature:

Gentlemen—I herewith transmit copies of resolutions adopted at a meeting of the citizens of Shoshone county, held in Wardner on the 10th inst. They will explain themselves.

I think that your honorable bodies should take the matter up before you adjourn to-day and memorialize Congress as requested. You should go even further and adopt a concurrent resolution instructing the State Land Department to take such steps through our attorney as will stay proceedings.

Hundreds of men in the Coeur d'Alenes who are working for wages are holding prospects with a view of being able some day to develop them. In most cases no survey of these locations has been had, and the owners have not the means to pay for running the necessary lines.

The ruling of the department in Washington is particularly severe on the class of men who are the least able to stand it. Large mining corporations have in most cases secured patents on their claims and are able to protect themselves, but the poor men who have gone in and opened up Shoshone county and who are without means, are deserving of—and should have—the protection of their State government at least if they can not get that of the national department in Washington.

Your immediate attention should be given to this matter.

Very respectfully, yours,

W. J. McCONNELL, Governor.

A day or two later we received through the same source the further action of the Legislature of Idaho in the same direction, which additionally tended to crystallize public sentiment in our direction. The following is inserted with the news comments because of its supreme importance at a time when our legislation was still in some jeopardy.

IDAHO IS INTERESTED.

She Has a Share in the Fight with the Northern Pacific — As to the Mineral Lands—Action Taken by the State Legislature Regarding This Matter —The Hartman Bill Commended.

WARDNER, Idaho, Jan. 24.—The miners of the Coeur d'Alene mineral belt are taking much interest in the fight with the Northern Pacific Railroad Company for possession of the mineral lands of the Northwestern States. There is a large tract of mineral-bearing land in this part of the world that will be affected by the settlement of this question. In the State Legislature now in session at Boise Representative Neill, of this county, has been active in pushing consideration of this question. A joint committee was appointed to draft a memorial with reference to the mineral lands within the Northern Pacific grant.

The committee recommended that the following be at once telegraphed to the United States Senate and a copy be mailed to the Montana Legislature:
To the Honorable Senate of the United States:

The Legislature of the State of Idaho respectfully urges upon your honorable body the importance of the immediate passage of the bill known as the Hartman mineral land bill, providing for the segregation of the mineral lands from the grant of the Northern Pacific Railroad Company within the States of Montana and Idaho. We urge immediate action because of the great material interests involved. Memorial in due form will follow by mail.

The committee also recommended adoption of the following memorial:
To the Honorable Senate of the United States:

Your memorialist, the Legislature of the State of Idaho, respectfully represents to your honorable bodies as follows, to-wit:

That a large portion of the lands within the limits of the grants to the Northern Pacific Railroad Company in the State of Idaho is known to be mineral lands; that many valuable mines and prospects are located upon the odd sections within the limits of said grant. That the issuing of patents to said lands, thus vesting the title thereto in the said railway company, must result in irreparable loss to mine owners, prospectors and all people living in the great mining districts situated within the limits of said grant. That the immediate passage of the bill known as the Hartman mineral land bill, now pending before your honorable body, which provides for segregation of these mineral lands from the operation of said grant, before the issuing of patent, is absolutely necessary to the end that the rights of miners and prospectors, as well as communities in general, within the limits of said grant, may be protected.

The Boise Statesman says: A concurrent resolution was also presented by the committee instructing the Governor to take proper steps to enjoin the Secretary of the Interior from issuing patents to the Northern Pacific to mineral lands held and claimed by Idaho citizens, and to confer with the State officials of Montana with that end in view.

After reading the report Wyman, of the joint committee, explained the rea-

sons for the committee urging haste in the premises. The ruling of the Secretary of the Interior requiring the miners to establish the existence of mineral in the Northern Pacific grant at this time worked a great hardship on the miners, in the dead of winter, to establish that fact; therefore, unless proceedings were stayed, the miners would not be able to file their contests within the prescribed sixty days.

Neill, of Shoshone, said that in his opinion the Secretary of the Interior had been flirting with the Northern Pacific. He had recommended to the House the passage of the Hartman bill, but, a short time afterwards, reversed himself in a recommendation to the Senate. Something was accountable for the Secretary's change of heart, a thing that was in direct conflict with the decision of the United States Supreme Court. Neill went over the entire question, and, in conclusion, asked that there be not a dissenting vote against the committee's report.

Bennett, of Owyhee, said he thought the people was greater than Congress or the Secretary of the Interior. To require the miners to establish whether or not ground covered with ten feet of snow was mineral or non-mineral was preposterous. Everything possible should be done to stay proceedings to the end that the interest of the people be subserved.

The report of the committee was adopted unanimously.

Prior to this, I had sent telegrams to Montana to prominent citizens expressing my fears for the fate of the mineral land bill, and asking that public sentiment should be aroused in its behalf; but day after day passed without any expression from those who had authority to state the feelings of the citizens of the State; however, on the 3d day of February Senator Power received the memorial of the Legislature of Montana, and on the following day presented it and had it printed in the Record, and the day succeeding the memorial of the Chamber of Commerce, which he also presented in the following language: "I present the petition of the Chamber of Commerce of the city of Butte, Montana, representing the leading mining community of America, and lying within the land grant of the Northern Pacific Railroad, praying for the prompt passage of House bill No. 3476, known as the mineral land bill. I move that the petition lie on the table and that it be printed as a document."

The motion was agreed to.

The history of Montana's memorial to Congress is interesting, in that it arrived too late to materially assist in the fight in which we had been involved. The lines had been now so formed that the receipt of aid from Montana was surely of less importance than if it had been presented earlier. The slow movement of the memorial through the Legislature astonished us all. We had been confidently expecting its arrival every day for a fortnight, and thought surely when Senator Mantle came he would bring a certified copy of the same.

Since I returned to Montana I find the record shows it was introduced by Monteath January 8th, and on the same day passed by the House unanimously; received in the Senate January 11th, and passed in that body on the 14th; on the 17th it was reported from the enrollment committee, and on the 24th, seven days later, signed by the President of the Senate. This was a strange delay of a valuable week which the officers of the Legislature did not seem to be able to account for, except as to the Secretary of the Senate, who assured me that it was signed as soon as received.

The memorial was important, however, in directing the attention of the President to the condition of matters in Montana, and is printed in full below as taken from the Record, as is also the memorial of the Butte City Chamber of Commerce.

HOUSE JOINT MEMORIAL NO. ONE.—Introduced by J. H. Monteath, of Silver Bow.

A MEMORIAL RELATING TO MINERAL LANDS WITHIN THE NORTHERN PACIFIC RAILROAD LAND GRANT IN MONTANA.

To the Honorable, the Senate of the United States:

Your memorialists, the Fourth Legislative Assembly of the State of Montana, respectfully represent and show:

That by act of Congress of July 2d, 1864, there was granted to the Northern Pacific Railroad Company every alternate or odd-numbered section of public land, not mineral, to the amount of twenty sections per mile on each side of the line of said railroad, through the Territories (of which Montana was then one) of the United States. All mineral lands, except those containing coal and iron, were excluded from the grant. If the alternate sections within the original limits of the grant are found to have been claimed or reserved, other lands in lieu are granted within indemnity limits, extending twenty miles beyond the original limits on each side of the line of road. The length of the line of the Northern Pacific Railroad in Montana is about 780 miles. The number of acres granted in Montana is nearly eighteen millions within the original limits, and nearly five millions, if found necessary to make up deficiencies, within the indemnity limits. These figures are from official estimates of the Land Department. By the same authority it is approximately estimated that one-third of the land within this vast grant is mineral.

The railroad company has persistently contended that all lands not known to be valuable for mineral at the time the company definitely fixed the line of its road in 1882 passed to the company under its grant.

The claim has been disallowed by the Supreme Court of the United States in Barden vs. N. P. R. R. Co. (154 U. S. 288), decided in May, 1894. That court held that the railroad company acquired no title or right under its grant to lands valuable for mineral (except coal and iron), and that such lands were expressly excluded from the grant; that the Land Department of the Government, under laws now existing or hereafter to be enacted, had the power, and it was its duty, to investigate and determine the mineral or other character of the lands within the grant before it issued any patent to the railroad company, and that the company had no claim to any lands known to be valuable for minerals before patent issued to it. The court says that it was never the intention of Congress to grant any lands valuable for mineral to the railroad company, but that, on the contrary, it was the intention to preserve all such lands for exploration and purchase by citizens of the United States.

It is not necessary to dwell upon the importance, not only to the citizens of Montana, but to the Government of the United States, and all its people, of the present as well as future generations, of keeping these mineral lands for exploration and development and of preventing them from becoming the property of a railroad corporation. Certainly, any proposed legislation having these ends in view should be entitled to serious consideration and encouragement.

There is now pending before your honorable body H. R. 3476, Fifty-third Congress, second session, entitled "An act to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho." The bill has already passed the House of Representatives, and is the same as Senate bill No. 434, introduced into your body before the passage of the House bill. H. R. 3476 provides for the examination and classification, as to their

mineral or non-mineral character, of lands, both surveyed and unsurveyed within the Northern Pacific Railroad grant in Montana and Idaho, by commissioners to be appointed by the President of the United States. These commissioners are to examine and report as to such lands to the Land Department, and opportunity is given to contest their findings by the railroad company or other parties interested. The object of the bill is to have the mineral lands ascertained and segregated as speedily as possible, consistently with the rights of all parties, and to preserve such lands for the people and from the railroad corporation, in accordance with the intention of Congress and the law as declared by the Supreme Court of the United States. Your memorialists believe that the bill will effectually attain this result.

Pending the consideration of this bill in your honorable body, the Secretary of the Interior has promulgated certain rules and regulations, under date of July 9th, 1894, "in the matter of the selection by railroad companies of lands in satisfaction of their grants."

The main features of these rules and regulations are that the examinations and reports as to the mineral or non-mineral character of these lands are to be made by the "agents and employes" of the railroad companies; that the burden and expense of the contest is put upon individual mineral claimants, and that the interest and duty of the Government to preserve the mineral lands for the people is entirely ignored. Your memorialists can not too strongly condemn and protest against these rules and regulations. They are ill-advised and unjust. Their enforcement can have no other result than to vest title to a large proportion of the mineral lands in the railroad corporations, and in the teeth of the intention of Congress and of the law as declared by the highest tribunal of our country.

H. R. 3476 should become a law, even if there were no other season for its enactment, to prevent the carrying out of these rules and regulations.

In view of the foregoing facts, your memorialists respectfully, but earnestly and heartily ask the passage by your honorable body, as speedily as practicable and before the end of the Fifty-third Congress, of H. R. 3476, above referred to.

And your memorialists will ever pray, etc.

Signed.

WILBUR F. SWETT,
Speaker of the House.

ALEX. C. BOTKIN,
President of the Senate.

Approved:

J. E. RICKARDS,
Governor.

The above is a true copy of H. J. M. No. 1.

E. W. STETSON,
Chief Clerk.

To the Honorable, the Senate of the United States:

We, your memorialists, the Chamber of Commerce of Butte City, Mont., representing one of the leading mining communities of America, and solicitous of the future welfare of the mining industry in this State and nation, respectfully present to you the following facts and petitions:

First—The terms of the grant of land to the Northern Pacific Railroad expressly except all mineral lands except coal and iron.

Second—Not content, however, with the fabulously rich gift of agricultural and other lands received under this grant, this corporation has, for many years, sought to acquire title to mineral lands in the State of Montana and other Western States, to which it has no shadow of right and could acquire no title were the true character of the land only investigated.

Third—Under the rules prevailing in the United States Land Department, all that is requisite to establish the non-mineral character of land is for an agent of the railroad company to make affidavit that he has caused the lands to be examined by agents and employes of the company, and that to the best of his knowledge and belief none of the same are mineral lands.

Fourth—Under these rules the Northern Pacific Railroad Company has recently received patents for more than 300,000 acres in the State of Montana, most of which your memorialists are informed and believe is mineral land, and there are applications pending for over 1,000,000 acres more of the same character. The railroad company has cunningly chosen two months in the dead of winter in which to advertise its applications, knowing that it is impossible for private parties to make any investigation of the lands in question at this time of the year.

Fifth—As an evidence of the bad faith of the railroad company may be instanced the facts that, while the rules of the land department allow no application within six miles of a mineral location or claim, and there is not such a spot in Silver Bow county, yet, as shown by the advertisement hereto attached, now running in the columns of the Butte Miner, several applications are pending for lands in Silver Bow county, and at least one section of these lands (to-wit, section 31, town. 3 north, range 7 west) is within two miles and a half of the heart of Butte City, and is not only surrounded but covered with mineral locations.

Your memorialists respectfully submit to your honorable body that the present rules of the land department do not sufficiently protect the interests of the United States and the citizens thereof in and to these lands, and that their non-mineral characer should be determined not by agents or employes of the railroad company, but by disinterested judges or commissioners appointed by the United States.

To this end we respectfully petition you that the bill introduced by Hon. Charles S. Hartman, of Montana, and known as House bill 3476 (Senate bill No. 434), which provides for the appointment of such commissioners, may be speedily enacted into a law. Any legislation that protects the nation's rights to these lands must be promptly given, for the Northern Pacific Railroad Company is actively prosecuting its applications for patents to these lands.

Signed by order of the Butte Chamber of Commerce, this 30th day of January, 1895.

HENRY MULLER,
Acting President.

J. A. BAKER,
Secretary.

The mineral land bill as agreed upon and amended by the Senate committee was presented on Monday, the 4th day of February, as an amendment. It would have passed the Senate unanimously but for the pretended friendly inquiries of Senator Mitchell, of Oregon, and Senator Stewart, of Nevada, and the impatience exhibited by Senator Gorman, who had control of the floor. These three gentlemen are known to have especial relations with the railroads of the country, and had all along been placed by us in an attitude of hostility. Therefore, we were not surprised when we found them interfer-

ing to deter our progress. We were content to find that they had a wholesome fear of their constituents and dare not openly fight against us. The proceedings, as preserved in the Record, will best show the attitude of these Senators, and is as follows:

MINERAL LANDS IN MONTANA AND IDAHO.

MR. POWER. I am instructed by the Committee on Public Lands to report an amendment in the nature of a substitute for the bill (H. R. 3476) to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho. The bill to which the amendment refers was reported by the committee on the 17th of December last, and I ask unanimous consent for its present consideration.

The VICE-PRESIDENT. The Senator from Montana asks unanimous consent for the present consideration of the bill indicated by him.

Mr. COCKRELL. Has the bill just been reported?

Mr. POWER. The bill was reported some time since, but the substitute, which is now proposed, was reported by the Committee on Public Lands this morning unanimously.

Mr. GORMAN. I am very sorry to interpose an objection, but I do not see how I can give way to that bill.

Mr. BERRY. I hope the Senator from Maryland will allow the bill to be considered and passed. Action upon it has been delayed from time to time, and there has been a great deal of difficulty concerning it, but the matter has been finally compromised between the Interior department and the parties in interest. The bill has reference to a very important matter to the States of Montana and Idaho, these mineral States.

Mr. GORMAN. Unanimous consent has been given that the Senate, immediately after the routine morning business to-day, shall proceed with the consideration of the District of Columbia appropriation bill and dispose of it; but in this case, if the bill does not lead to discussion. I shall not object to it; but I give notice to the Senate that I shall be compelled to object to any other request for unanimous consent made this morning.

The VICE-PRESIDENT. The substitute reported by the committee will be read for information.

The SECRETARY. It is proposed to strike out all after the enacting clause of the bill and insert:

That the Secretary of the Interior be, and is hereby, authorized and directed, as speedily as practicable, to cause all lands within the land districts hereinafter named in the States of Montana and Idaho within the land-grant and indemnity land-grant limits of the Northern Pacific Railroad Company, as defined by an act of Congress entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the northern route," approved July 2, 1864, and acts supplemental to and amendatory thereof, to be examined and classified by commissioners to be appointed as hereinafter provided, with special reference to the mineral or non-mineral character of such lands, and to reject, cancel and disallow any and all claims or filings heretofore made, or which may hereafter be made, by or on behalf of the said Northern Pacific Railroad Company on any lands in said land districts which upon examination shall be classified as provided in this act as mineral lands.

Sec. 2. That for the purpose of making the examination herein provided for there shall be appointed by the President of the United States, as soon as practicable after the passage of this act, three commissioners for each of the

following land districts, to-wit: The Bozeman, Helena and Missoula land districts, in the State of Montana, and the Coeur d'Alene land district, in the State of Idaho, at least one of whom for each district shall be a practical miner and two of whom at least residents of such district; and said persons so appointed for each district shall constitute a board of commissioners to perform within such district the duties herein prescribed. They shall each receive for their compensation $10 for each day they may be actually engaged in the performance of their duties, which shall include their transportation and subsistence expenses; and their accounts shall be audited by the Secretary of the Interior and paid monthly. Before entering upon the duties each of said commissioners shall take an oath to faithfully perform the duties of his office. Said commissioners shall make examination of the lands herein mentioned within their respective districts, and may also take testimony of witnesses as to the mineral or non-mineral character of any of said lands, and receive any other evidence relating to said matter, and shall have power to summon witnesses to appear before them, and to administer oaths; and they shall, immediately upon their appointment, proceed to examine and classify the lands herein mentioned within their respective districts, as provided in this act, and shall fully complete said classification within the term of four years from the date of this act. The oath of office of said commissioners shall be filed by them in the office of the Commissioner of the General Land Office. All testimony taken by said commissioners shall be reduced to writing, subscribed by the witnesses, and filed with the report of the commissioners hereinafter required. The action or decision of a majority of said commissioners in each district shall control in all matters hereinafter provided for. Not more than two of the commisioners in any one district shall be appointed from the same political party. That the commissioners shall perform the work of examination and classification herein directed according to such rules and regulations as the Secretary of the Interior shall prescribe.

Sec. 3. That all said lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation and purchase under the provisions of the United States mining laws, and the commissioners in making the classification hereinafter provided for shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probabilities of such land containing valuable mineral deposits because of its said formation, location or character. The classification herein provided for shall be by each legal subdivision where the lands have been surveyed. If the lands examined are not surveyed, classification shall be made by tracts of such extent and designated by such natural or artificial boundaries to identify them as the commissioners may determine. And to enable the Northern Pacific Railroad Company to select the indemnity for mineral lands as provided in its charter, the surveyor-general for said State or States shall compute the area of said unsurveyed tract or tracts so classified as mineral. Where mining locations have been heretofore made or patents issued for mining ground in any section of land, this shall be taken as prima facie evidence that the 40-acre subdivision within which it is located is mineral land: Provided, That the word "mineral," where it occurs in this act, shall not be held to include coal or iron: And provided further, That the examination and classification of lands hereby authorized shall be made without reference or regard to any previous examination or report or classification thereof.

Sec. 4. That such of the lands herein mentioned as have been surveyed

prior to the passage of this act shall be first examined and classified as herein provided, and afterwards and as speedily as practicable the lands herein mentioned which have not been surveyed, until all the lands herein mentioned shall have been examined and classified as herein provided.

Sec. 5. That said commissioners shall, on or before the 5th day of each month, file in the office of the register and receiver of the land office of the land district in which the land examined and classified is situated a full report, in duplicate, in such form as the Secretary of the Interior may prescribe, showing all lands examined by them during the preceding month, and specifying clearly, by legal subdivisions, where the land is surveyed, or otherwise by natural objects or permanent monuments, to identify the same, the lands classified by them as mineral lands and those classified as non-mineral; and with said report shall be filed all testimony taken and written communications received by said commissioners relating to the lands embraced in the report. The register and receiver shall file one duplicate of said report in their office, together with all accompanying testimony and papers, and the other duplicate shall be by them forwarded direct to the Secretary of the Interior, and said commissioner shall furnish to the Secretary of the Interior at any time such further or additional report or information as he may require concerning any matters relating to their duties or the performance of the same. Upon receipt of such report the register of the land office shall, at the expense of the United States, cause to be published in a newspaper of general circulation in the county in which the land is located, at least once a week for four consecutive weeks, notice of the classification of lands as shown by said report, and any person, corporation or company feeling aggrieved by such classification may, at any time within sixty days after the first publication of said notice, file with the register and receiver of the land office a verified protest against the acceptance of said classification, which protest shall set forth in concise language the grounds of objection to the classification as to the particular land in said protest described, whereupon a hearing shall be ordered by, and conducted before, the said register and receiver, under rules and regulations as near as practicable in conformity with the rules and practice of such land office in contests involving the mineral or non-mineral character of land in other cases; and an appeal from the decision of the register and receiver shall be allowed to the Commissioner of the General Land Office and the Secretary of the Interior, under such rules and regulations as the Secretary of the Interior may prescribe: Provided, That at such hearings the United States district attorney or his assistants for the judicial district in which the land is situated shall appear and defend the interests of the United States, and for such service he shall receive compensation not exceeding $15 per day for each day's actual service before the register and receiver, to be paid out of the fund provided for the examination and classification of said mineral lands.

Sec. 6. That as to the lands against the classification whereof no protest shall have been filed as hereinbefore provided, the classification, when approved by the Secretary of the Interior, shall be considered final except in case of fraud, and all plats and records of the local and general land offices shall be made to conform to such classification. All lands so classified as above without protest, and the classification whereof is disapproved by the Secretary of the Interior, and all lands whereof the classification has been invalidated for fraud, shall be subject to hearing and determination in such manner as the Secretary of the Interior may prescribe. And as to all such lands, and as to the lands against the classification whereof protests may be

filed, the final ruling made after the day set for hearing shall determine the proper classification; and all records of the local and general land offices shall be made to conform to the classification as determined by such final ruling, and all costs of such hearings shall be paid by the unsuccessful party, under such rules as the Secretary of the Interior may prescribe; and the Secretary of the Interior is hereby authorized to establish such rules and regulations as may be necessary to carry into effect the true intent and provisions of this act as speedily as practicable.

Sec. 7. That no patent or other evidence of title shall be issued or delivered to said Northern Pacific Railroad Company for any land in said land districts until such land shall have been examined and classified as non-mineral, as provided for in this act; and such patent or other evidence of title shall only issue then to such land, if any, in said land districts as said company may be, by law and compliance therewith and by the said classification, entitled to, and any patent, certificate or record of selection, or other evidence of title or right to possession of any land in said land districts, issued, entered, or delivered to said Northern Pacific Railroad Company in violation of the provisions of this act shall be void: Provided, That nothing contained in this act shall be taken or construed as recognizing or confirming any grant of land or the right to any land in the said Northern Pacific Railroad Company, or as waiving or in any way affecting any right on the part of the United States against the said Northern Pacific Railroad Company to claim a forfeiture of any land grant heretofore made to said company.

Sec. 8. That there is hereby approriated, out of any money in the Treasury not otherwise appropriated, the sum of $20,000, or so much thereof as may be necessary, to be expended to carry into effect the provisions of this act, the same to be paid out upon the order of the Secretary of the Interior; and the Secretary of the Interior is hereby required to embrace in the annual estimates submitted to Congress for appropriations for the Interior Department a sufficient sum to pay the said commissioners for the fiscal year next ensuing, and annually thereafter until the classification of lands required by this act has been fully accomplished.

Mr. MITCHELL, of Oregon. As at present advised I do not wish to obstruct the passage of the bill, but I was not aware that it was to be called up this morning and put on its passage. Therefore I should like to inquire as to a few points of the Senator who reported the bill. Do I understand that this is a local bill applying only to certain land districts in the States of Montana and Idaho?

Mr. POWER. That is all. It applies to four mineral land districts, three in Montana and one in Idaho.

Mr. MITCHELL, of Oregon. I should like to inquire if there is any good reason why this should be a local bill and made to apply only to those particular districts and not to all the mineral land districts in the United States.

Mr. POWER. The Northern Pacific Railroad Company have from eighteen to twenty million acres of granted land in Montana and Idaho. Perhaps one-third of that land is in the mineral districts. There has been a dispute as to whether the mineral lands belong to the Northern Pacific Railroad Company or not. The matter was appealed to the Supreme Court of the United States, and the Barden case is cited as to that particular point.

This bill has been prepared with great care, and a similar bill has been before the Senate and House of Representatives for years. The object of it is to enable the Interior Department to classify—decide what is mineral and what is agricultural lands in those particular districts.

Mr. MITCHELL, of Oregon. Does the Senator from Montana understand that the provisions of this bill will be satisfactory to the settlers, the miners, agriculturists, and other persons interested in having a correct determination of this whole question in the districts which are covered by it, as well as the railroad company, or is the bill in the interest of the railroad company?

Mr. POWER. The miners in Montana organized a mineral land association several years ago, and in that association this bill was formed. The miners in Idaho and Montana, particularly in Montana, understood the merits of the bill fully.

Mr. MITCHELL, of Oregon. I should like to inquire if this bill has the sanction of all the members of the committee on public lands?

Mr. POWER. It has.

Mr. MITCHELL, of Oregon. One other question. I should like to know whether the questions I have suggested were considered by the committee; that is to say, whether the bill should be simply a local bill, or whether it should be a general bill? Was that matter considered?

Mr. POWER. That matter was brought up.

Mr. MITCHELL, of Oregon. I myself at one time brought that matter to the attention of the Committee on Public Lands, and submitted certain papers relating to mineral lands in Oregon, with a view of having the whole subject considered, so that any legislation that might be enacted might be general in its character and cover all cases of mineral lands.

Mr. POWER. That question was brought up and was considered, and it was thought better that the bill should be made to apply to these particular districts.

Mr. VILAS. If the Senator from Oregon will allow me, I will say to him in reference to this bill, that I was very much opposed to it, and I am a member of the Committee on Public Lands, as he knows; but I have yielded my acquiescence because the Department of the Interior, after examination, came to the conclusion that it would facilitate the adjustment of the lands and give satisfaction to the people of those mineral regions in Montana and Idaho; and I would not consent to the passage of such a bill as this as a general bill under any circumstances. It is only owing to the peculiar local situation that it seemed to me this measure might be specially adopted, and even then I felt some reluctance in agreeing to it.

Mr. MITCHELL, of Oregon. The reason I take an interest in this matter arises from the fact that there is in Southern Oregon quite a large extent of mineral territory, and there has been considerable contention there for some time past as to the rule which has been adopted by the Department of the Interior looking to the manner of determining what are and what are not mineral lands.

I am not sure from hearing the substitute read, which has only been reported this morning,—and it seems to be involved and complicated to a very great extent—that those interested aside from the railroad company, in the proper determination of this question—I now refer to persons who insist, and properly so, that whatever is mineral shall be excluded from patents to the company——

Mr. GORMAN. Will the Senator permit me?

Mr. MITCHELL, of Oregon. Let me finish my sentence.

Mr. GORMAN. Very well.

Mr. MITCHELL, of Oregon. That whatever land is mineral should be excluded from the claims of the railroad company. I am not sure that the bill is any better than the present rule of the department. If I thought it was, I

should be disposed to insist it should be general; but, in fact, as I understand it, I do not believe it is as good a rule as that adopted by the department. It seems to me too complicated. I shall not, however, obstruct the passage of the bill if the Senators from the States concerned think it valuable for their people, especially as the Committee on Public Lands has had the whole subject under long consideration, and have, as the Senator states, unanimously come to the conclusion that this is the proper thing to do and that no general bill is advisable.

Mr. STEWART. Mr. President, with regard to this matter, I have but a few words to say.

Mr. GORMAN. I ask the Senator to yield to me. I must object to the consideration of the bill.

Mr. STEWART. I merely want to say a word, which I think is very important. I want to call the attention of the Senate to the exact point in this case. After the settlement of California, when the first public land laws were passed, the mineral land region was reserved. When the settlers desired to occupy a little valley, I secured, after considerable labor, the passage of a law allowing lands to be sold for agricultural purposes where they were found to be more valuable for those purposes than for mining. The Department of the Interior established a code of rules, which confined the testimony to be taken to the land in question, which was narrow. The Committee on Mines and Mining, in preparing a bill which has been passed by one House or the other several times, modified that rule and allowed evidence not only of what was on the surface, but declared that what was on the surface should be evidence to this extent, that wherever there was rock in place it should be prima facie evidence that the land was mineral, and then evidence might be taken as to the adjoining land, as veins might possibly run through it.

As the proposed substitute has not been printed, I have not had a chance to examine it, and do not know whether or not the committee has adopted the right rule. If mineral lands are selected by subdivisions whole quarter sections will be taken in as mineral lands, which will prevent the settlers from occupying the valleys. On the contrary, if everything is declared non-mineral where minerals are not found on the surface of the ground, that would include land which should be classified as agricultural.

It is very difficult to determine what is the proper rule. We tried very hard to get the Interior Department to allow evidence of the adjoining lands, and make the fact that there was rock in place containing minerals prima facie evidence that the land was more valuable for mining than for agricultural purposes.

I do not wish to delay the passage of the bill, but it may be a precedent which may give rise to trouble in a large section of country. I should like to see a general bill prepared and passed which will draw the proper distinction. I believe it is high time that the Government had a commission to determine as to this whole question. The main thing is to secure the adoption of a proper rule of evidence so that mining lands will not be taken as agricultural lands and agricultural lands as mining lands.

I have had no oportunity to study the language used in this bill so that I am not altogether satisfied that it should be passed I might be entirely satisfied if I had an opportunity to examine the bill, but exact language must be used or there will be great injustice done one way or the other.

Mr. GORMAN. Mr. President——

Mr. PLATT. Will the Senator from Maryland allow me one word?

Mr. GORMAN. I feel compelled to object to the present consideration of the bill, and I hope Senators will allow it to go over. We have a unanimous agreement that the District of Columbia appropriation bill shall be concluded to-day.

The VICE-PRESIDENT. There is objection to the present consideration of the bill, and it will go over under the rule.

At this point I desire to introduce the letter of A. H. Ricketts, Esq., chairman of the mineral land committee of the California Miners' Association; also the proceedings had in Congress on the 5th day of February, as exhibiting the spread of interest in the question at issue.

SAN FRANCISCO, Dec. 13, 1894.

Hon. Geo. W. Irvin,

Mineral Land Commissioner, State of Montana,

No. 812 Twelfth street N. W., Washington, D. C.:

My Dear Sir: Your highly esteemed and very complimentary letter of 7th inst. has been duly received and its contents noted. I thank you very much for the information regarding the condition of the bill for the examination, classification and segregation of the mineral lands within the grant of the Northern Pacific Railway Company, and beg that you will apprise me of its progress before the Committee on Public Lands, as attained.

The California Miners' Association is preparing for a determined effort to secure the mineral lands in this State to the miner and prospector. At a meeting of its executive committee, held in this city on the 10th inst., the pamphlet you sent me several weeks since, containing a copy of the aforesaid bill, and certain correspondence appertaining thereto, was read and the committee indorsed the same and expressed the belief that the provisions of said bill should be made applicable to this State. It has ordered the issuance of several thousand copies of said pamphlet for distribution in the mining camps of this State, and it will be used as an educator, as well as an argument for the obtaining of funds to assist in securing appropriate legislation in the matter.

I have been appointed the chairman of the committee for the protection of the mineral lands, called into being by our late miners' convention. This committee is working assiduously to obtain data for presentation to the land department of instances wherein mineral lands have been patented to or applied for by the railroads within this State, and in the course of the next thirty days we will have maps completed which will show much of this graphically and at a glance. Should like to ask you if it would be possible to induce President Cleveland to issue an order suspending the issuance of all patents to railroads within this and the adjoining States and Territories while awaiting congressional action.

Might I also ask you to see our Congressman, Hon. A. Caminetti, and impress upon him the necessity of procuring and sending to me at the earliest moment a list of all railroad selections in this State, now awaiting patent in Washington.

With kind regards, I remain, yours very truly,

A. H. RICKETTS.

(Dictated.)

SUSPENSION OF CERTAIN LAND GRANTS.

Mr. KRIBBS. Mr. Speaker, I desire to submit a privileged report from the Committee on Public Lands.

The SPEAKER. The report will be read.

The Clerk read as follows:

Resolved, That the Secretary of the Interior be, and he hereby is, requested to inform the House of Representatives by land districts, how much land has been patented by the land grant railroad companies since May 26, 1894, and what examination was made to determine the non-mineral character of the land, and whether any of the lands thus patented were before or have been since claimed as mineral.

The SPEAKER. The Clerk will read the report.

Resolved, That the Secretary of the Interior be requested to suspend action on all selections of said companies now pending until the expiration of this Congress, unless legislation providing for the segregation and classification of the mineral land within the limits of said grants shall be enacted previous thereto.

The report (by Mr. Kribbs) was read, as follows:

The Committee on Public Lands, to whom was referred House resolution asking for certain information and requesting the Secretary of the Interior to suspend action on selections filed by land grant companies until the expiration of this Congress, or until legislation is enacted on the subject, have considered the same and report it back with an amendment as follows:

Insert at the end of the first resolution, line 15, page 1, the following: "And also a list of pending selections awaiting approval."

On the 23d of July, 1894, House bill 3476 was passed by the House of Representatives and is now pending in the Senate on a favorable report from the Committee on Public Lands of that body. The object of that measure was to examine and classify mineral lands within the grant of the Northern Pacific Railroad in Idaho and Montana.

On the 17th of this month H. R. 8551, containing identical provisions affecting land grants in California, was introduced and referred to this committee. A substitute therefor, including Oregon and Arizona, was adopted and reported by said committee. The necessity for action is generally admitted, and this committee is of opinion that pending what now appears favorable consideration of said resolution by Congress the Department of the Interior should suspend all proceedings.

Your committee recommend the passage of the resolution as amended.

The SPEAKER. The Chair will state that this is not a privileged resolution. A part of it is a resolution of inquiry, but there is another part directing the suspension of certain operations in connection with the patenting of lands referred to in the resolution.

Mr. KRIBBS. I ask unanimous consent for its present consideration.

There being no objection, the resolution was considered, the amendment agreed to and the resolution as amended was passed.

On motion of Mr. KRIBBS, a motion to reconsider the last vote was laid on the table.

On Wednesday, the 6th of February, Senator Power obtained a further hearing and met with several objections, but at the solicitation of Chairman Senator Berry and others they were all withdrawn and the amended bill passed the Senate; but much to the disgust of everyone present Senator Gorman entered a motion to reconsider.

The motion of Senator Gorman left all parties in doubt as to what extent he was going to use his arbitrary power as leader of the Senate. He was asked for an explanation of his action, and answered that it was at the request of a gentleman from Montana made to Senator Vest. A letter was immediately sent to the supposed Montanian, of which the following is a copy:

WASHINGTON, D. C., Feb. 6, 1895.

Dear Sir: What is the matter with you? Senator Gorman has asked to have the mineral land bill that passed this morning reconsidered at the request of a Montana man. You are the man.

Send you the bill as passed. Examine your earliest convenience, and, if all right, withdraw your request.

The delegation in Congress from Montana, including the State mineral land agent, have all agreed on this bill.

Not hearing from you, will take it that you are fighting the bill.

Yours respectfully,

(Signed.) T. C. POWER.

The gentleman was also seen personally and his disclaimer was accepted. He joined us in an endeavor to get Gorman to withdraw his motion for a reconsideration.

In the efforts that followed, prominent Democrats of Montana, at my solicitation, wired Senator Gorman to withdraw all opposition. Senators Dubois, Berry, Power and Mantle held frequent interviews with Senator Gorman, and finally Mr. Mantle drew a series of amendments intended to meet the Senator's objection. These were agreed upon by all parties concerned, and appear in the Record of Monday, February 11th, and are here produced:

MINERAL LANDS IN MONTANA AND IDAHO.

Mr. GORMAN. A few days since I entered a motion to reconsider the vote by which House bill 3476, known as the mineral land bill, was passed. The Senator in charge of the bill and others interested in it desire to make certain amendments to it. I ask that my motion may be now considered.

Mr. CALL. I object to the consideration of anything other than morning business at this time.

The VICE-PRESIDENT. There is objection.

Mr. DUBOIS. I ask the Senator from Florida if he will not withdraw his objection for a few moments to the consideration of the bill? It is a very important matter.

Mr. GORMAN. My motion is only for the reconsideration of a bill.

Mr. CALL. I do not object to that.

Mr. GORMAN. I understand the Senator from Florida not to object.

Mr. BERRY. I can indicate where the proposed amendments should come in.

Mr. GORMAN. I trust the bill will be laid before the Senate by unanimous consent.

The VICE-PRESIDENT. Is there objection to the present consideration of the motion heretofore entered by the Senator from Maryland for the reconsideration of the votes by which the bill was read the third time and passed?

Mr. PLATT. What is the bill?

Mr. GORMAN. It is House bill 3476, relating to mineral lands.

Mr. PLATT. The one relating to the Northern Pacific Railroad lands?

Mr. BERRY and Mr. GORMAN. Yes.

The VICE-PRESIDENT. The question is on the motion of the Senator from Maryland to reconsider the votes by which the bill (H. R. 3476) to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho was read the third time and passed.

The motion to reconsider was agreed to.

Mr. BERRY. After the word "expenses," in line 20, section 2, I move the amendment which I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. After the word "expenses," in line 20, of section 2, on page 2, it is proposed to insert:

"But the total amount of compensation to be paid to each commissioner annually shall in no case exceed the sum of $2,500."

The amendment was agreed to.

Mr. BERRY. In line 16, of section 2, on page 3, after the words "provided for," I move to strike out all down to and including the word "party," in line 18.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. On page 3, section 2, it is proposed to strike out all after the words "provided for," in line 16, down to and including the word "party," in line 18, as follows:

"Not more than two of the commissioners in any one district shall be appointed from the same political party."

Mr. HOAR. Is that an office which is proposed to be created? I do not approve of putting such provisions in our statutes.

Mr. BERRY. It is to strike out the provision which has been read.

Mr. HOAR. I beg pardon; I thought it was to insert.

The amendment was agreed to.

Mr. BERRY. After the word "located," in line 6, section 5, page 6, I move to insert what I send to the desk.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. After the word "located," in line 6, section 5, page 6, it is proposed to insert:

"And in one newspaper published in the capitals of Montana and Idaho."

The amendment was agreed to.

Mr. BERRY. After the word "Provided," in line 24, section 5, page 6, I move to strike out the remainder of the section, and insert in lieu thereof what I ask to have read.

The VICE-PRESIDENT. The amendment will be stated.

The SECRETARY. It is proposed to strike out all after the word "Provided," in line 24, of section 5, on page 6, down to and including the word "lands," in line 6, on page 7, as follows:

"That at such hearings the United States district attorney or his assistants for the judicial district in which the land is situated shall appear and defend the interests of the United States, and for such service he shall receive compensation not exceeding $15 per day for each day's actual service before the register and receiver, to be paid out of the fund provided for the examination and classification of said mineral lands."

And insert:

"That at such hearings the United States shall be represented and defended by the United States district attorney, or his assistants, for the judicial district in which the land is situated, or by some proper officer of the Interior Department, detailed by the Secretary of the Interior for that purpose, who shall receive a compensation not exceeding $10 per day for each day's actual service before the register and receiver, to be paid out of the fund provided for the examination and classification of said mineral lands."

The amendment was agreed to.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

Mr. BERRY. I move that the Senate request a conference with the House of Representatives on the bill and amendments.

The motion was agreed to.

By unanimous consent, the Vice-President was authorized to appoint the conferees on the part of the Senate; and Mr. Berry and Mr. Power, and Mr. Dubois were appointed.

I append a brief summary of the situation, as it presented itself at the time, in a letter to Governor Rickards, and written to him because he was led into a criticism of the apparent course pursued by Senator Power, caused by a bungling Associated Press dispatch, wherein it was stated that Senator Power had offered an amendment providing for the appointment of four commissioners, one to be named by the Northern Pacific Company, one by the Secretary of the Interior and two by the Congressional delegation. That being true, the astonishment of the people of Montana can well be imagined.

(Copy.)

UNITED STATES SENATE,
WASHINGTON, D. C., Feb. 12, 1895.

Gov. Jno. E. Rickards,
Helena, Montana.

Dear Sir: I will not undertake to explain to you in a letter the various interviews and conferences with parties opposed to the mineral land bill, but think it sufficient to state that meetings ranged through many days, and sometimes many times in a day.

At a conference committee with opponents of the bill two weeks ago, certain amendments were agreed upon, none of them exactly suiting either side, but none of them of so great importance as to cause an alteration of the measure, and most of them finally making the bill a better bill.

When these agreements had been arrived at, they were introduced in the shape of the "Power amendment or substitute," upon which, at the solicitation of the Herald, you briefly commented. I inclose you that bill as amended, marked "A," just showing you exactly what it was.

Finally, in that shape it passed, but Senator Gorman, at the solicitation, he says, of Montanians, entered a motion to reconsider. We think we know exactly who the Montanians were, and will convey to you the facts later.

The result of that motion hung us up for five days, and Senator Gorman submitted to us the bill altered, as it would be suitable to him and the gentlemen he represented. That bill is inclosed and marked "B."

But, after diligent work by everybody connected with our side of the case, we obtained the passage of the amended bill with the amendments you will find in the Record. (Copy sent herewith.) These we do not consider material.

Yesterday, as the Record will show, the bill passed the Senate. To-morrow morning it goes to the House for consideration. We have made such arrangements, and we don't think we can slip up on it, that action will be immediately taken to concur in the amendment, or non-concur, as we think best. The latter, we believe, will be our method, for the reason that if we move to concur, a man who is actually hostile to the bill can get up and debate, and, in the present condition, we cannot afford debate. If we move to non-concur, it will be only inviting the House to stand by a bill it has already passed; then if the conferees of the House are like those of the Senate, favorable to us, a meeting will be held, and they will unanimously report back to their respective Houses recommending the passage of the bill with its amendments, and that is a privileged question and must be determined without debate.

This letter and the enclosures will not be ready to forward to you before to-morrow afternoon, so I will be able to add possibly another stage of the proceedings in a postscript.

Very respectfully,

(Signed.) GEO. W. IRVIN.

February 13th, 1895.

P. S.—To-day our bill was presented by the Speaker in the House, and as agreed upon, Mr. McRae, chairman of the Committee on Public Lands, moved to non-concur, and asked for a conference, which was carried without opposition, and he obtained as conferees on the part of the House himself and Mr. Ellis, of Oregon, and Mr. Camenetti, of California. These gentlemen will meet the conferees already appointed by the Senate, chairman of the Public Lands Committee of the Senate, Mr. Berry, of Arkansas, Mr. Dubois, of Idaho, and Mr. Power, of Montana. These gentlemen will meet within a day or two and will present the bill to both houses in its amended form. It is a privileged question and can not be debated in either House, therefore I am sure that before this reaches you, you will have been informed by wire of the complete triumph of our efforts, but I will not congratulate you until I can do it by telegram.

On the 13th the simple proceedings were had in the House of laying before that body the bill, the non-concurrence in the amendments, and the appointment of conferees as follows:

The SPEAKER also laid before the House the bill (H. R. 3476) to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho.

The SPEAKER. This bill has been returned from the Senate with amendments and with a request for a conference.

Mr. McRAE. I move that the House non-concur in the Senate amendments and agree to the conference.

The motion was agreed to.

We now discovered a new difficulty. The Miners' Association of the State of California had taken up the subject of the mineral lands within the grant of the Southern Pacific Railroad, and had found that it was proposed to patent to the company under the "Rules of July 9th" about 350,000 acres of mineral lands. This set them to telegraphing their Senators and Representatives, demanding their activity to defeat this outrageous attempt. The San Francisco Examiner appeared with double-leaded articles castigating California's Representatives for their neglect, and demanding immediate effort in the direction of saving the mining interests of the State. Representative Camenetti had made the mistake of having written a letter approving the "Rules of July 9th" and now said it was necessary to do something to retrieve himself, so he solicited the chairman of the Public Lands Committee for a place on the conference committee on the part of the House and obtained it, conceiving the brilliant idea that at that late day he could include California in the benefit of the act. Everything was done in the way of promises of assistance later to obtain his agreement with the other conferees on the part of the House and those on the part of the Senate, but he stubbornly demanded that California should be made a part of the legislation. Thereupon the report was made without him, but with some changes demanded by Chairman McRae, as fully appears in the report of the conference committee filed by Senator Berry in the Senate on Saturday, the 16th, vide Record, to-wit:

Mr. BERRY submitted the following report, which was read:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 3476) to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with the following amendments:

In line 8 of section 2, after the word "and," strike out the words "two of whom at least residents" and insert in lieu thereof the words "a resident"; and the Senate agree to the same.

In lines 15, 16, 17, 18 and 19, of section 3, after the word "determine," strike out the words "and to enable the Northern Pacific Railroad Company to select the indemnity for mineral lands as provided in its charter, the surveyor-general for said State or States shall compute the area of said unsurveyed tract or tracts so classified as mineral"; and the Senate agree to the same.

In line 23 of section 5, after the word "published," strike out the words "in the capital cities of Montana and Idaho" and insert in lieu thereof the words "at the capital city of the State in which the lands may be situated," and the Senate agree to the same.

In lines 43, 44 and 45 of section 5, strike out the words "or by some proper officer of the Interior Department, detailed by the Secretary of the Interior for that purpose, who shall receive a compensation not exceeding," and insert in lieu thereof the words "unless the Secretary of the Interior shall detail some proper officer of the Department of the Interior for that purpose. The compensation for such service shall not exceed"; and the Senate agree to the same.

JAMES H. BERRY.
T.C.POWER.
FRED. T. DUBOIS.
Conferees on the part of the Senate.

THOMAS C. McRAE,
W. R. ELLIS.
Conferees on the part of the House.

The PRESIDING OFFICER. The question is on concurring in the report of the committee of conference.

Mr. PLATT. I should like a brief explanation of the second amendment, where some words are stricken out with reference to the selection of indemnity lands for the Northern Pacific Railroad Company.

Mr. BERRY. I will state to the Senator from Connecticut that in the Senate there was an amendment inserted in these words:

And to enable the Northern Pacific Railroad Company to select the indemnity for mineral lands as provided in its charter, the surveyor-genral for said State or States shall compute the area of said unsurveyed tract or tracts so classified as mineral.

Those words were stricken out of the bill because they had no proper place in it, and because there were certain members of the committee who were opposed to interfering in any way, either to ratify or to reject the original grant. They simply wanted it to stand on its merits unaffected by this bill.

Mr. PLATT. Let me ask the Senator another question which will perhaps get at the matter which I have in mind.

Mr. BERRY. Very well.

Mr. PLATT. If this bill passes, the Northern Pacific Railroad Company is

liable to lose some of the lands which it now claims under its grant. Is there any provision in this bill, or in any other bill, whereby they will be entitled to indemnity lands for those lost?

Mr. BERRY. I will state to the Senator from Connecticut that the original grant to the Northern Pacific Railroad Company provided that, if they failed to get the lands in the original grant, they should be entitled to certain indemnity lands. This bill does not in any way interfere with that right. If they have that right now, they will still have it without regard to this bill.

Mr. PLATT. All right.

The PRESIDING OFFICER. The question is on concurring in the report of the committee of conference.

The report was concurred in.

The conference report having been adopted in the Senate, it was duly sent to the House for action, and, although it was a privileged question, it was thought best not to press it in the face of the consideration of the naval appropriation bill. Therefore, on Thursday, the 19th, Chairman McRae contented himself with presenting it and designating Mr. Ellis, of Oregon, the other conferee, to call it up later. The Record gives these proceedings in full and are herewith printed:

Mr. McRAE. I desire to submit a conference report on the bill (H. R. 3476) to provide for the examination and classification of mineral lands in the States of Montana and Idaho.

Mr. TALBOTT, of Maryland. I should like to know whether the gentleman from Arkansas asks for the immediate consideration of this report. If he does I shall have to antagonize it, because I want the House to go on with the consideration of the naval appropriation bill.

Mr. McRAE. I have no disposition to have any contest over the consideration of this matter; and therefore I ask leave that the conference report, with the statement of the House conferees, be printed in the Record, and that the gentleman from Oregon (Mr. Ellis) be permitted to call it up as soon as the naval bill is finished.

Mr. TRACEY. If the naval bill should be finished to-day and this report should be called up immediately afterwards we should then know nothing more about it than we do now. On that ground I object to the request. If the intention is not to call up the report until to-morrow——

Mr. TALBOTT, of Maryland. There is no danger of its being called up to-day.

Mr. TRACEY. Then I withdraw my objection.

Mr. McRAE. The request to print the report in the Record would hardly imply that I wanted to call it up to-day.

Mr. CAMINETTI. As one of the committee I dissent from this report, and I ask permission to file my reasons for dissenting.

The SPEAKER. The only way to dissent on a conference report is to do so orally in the House.

Mr. CAMINETTI. Let that be the understanding, then.

The SPEAKER. In the absence of objection, this report and the accompanying statement of the House conferees will be printed in the Record, and the matter will go over, subject to be called up by the gentleman from Oregon (Mr. Ellis).

Mr. McRAE. I have made the request that the gentleman from Oregon be permitted to call this up, because when the time comes to do so I shall perhaps not be here. I wish to say now that I hope the report will be adopted. This is an important matter and ought to be disposed of as speedily as possible.

The SPEAKER. The Chair hears no objection to the request.

The statement of the House conferees is as follows:

The Senate amendment or substitute in many respects is identical with the bill as it passed the House. Both provide for the examination, classification, and segregation of the mineral lands within the limits of the Northern Pacific Railroad grant in four land districts in the States of Montana and Idaho by a board of three commissioners for each district. The Senate amendment requires that the examination and classification shall be fully completed in four years from the date of this act. The House bill fixed no limitation.

The most important change is in section 3, which defines what shall be classified as mineral lands. The House provision on this point is as follows:

"That all lands shall be classified and taken to be mineral lands under this act which prior to the passage of this act have been located or patented as mineral lands, or which have, or probably will have, a market value by reason of the minerals which they contain, or which show such indications of valuable mineral deposits as would induce a miner to spend his time or money upon them with the reasonable expectation of finding mineral in paying quantities, or which from their geological formation, or their situation or propinquity or relation to known mineral lands, are or probably will be valuable for the mineral therein; and all of these matters shall be considered by the commissioners in determining the mineral or non-mineral character of such lands and in classifying the same."

The Senate amendment on this point is as follows:

Sec. 3. That all said lands shall be classified as mineral which, by reason of valuable mineral deposits, are open to exploration, occupation and purchase under the provisions of the United States mining laws, and the commissioners in making the classification hereinafter provided for shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probabilities of such land containing valuable mineral deposits because of its said formation, location or character."

The purpose of the change is to make the definition conform to the established practice of the department and the decisions of the courts as to what should be classed as mineral lands, and has been approved by the Interior Department. The Senate amendment give the Department full power and authority to direct the work of the commissioners and limits the total amount of compensation to be paid each commissioner annually, including transportation and subsistence expenses, to $2,500. It reduces the compensation of the district attorney or his assistant from $15, as provided in the House bill, to $10, and provides that the Secretary of the Interior may detail some proper officer of his department for the purpose of representing the United States at hearings before said commissioners, with like compensation.

The provision of the House bill which declares that nothing contained in this act shall be taken or construed as recognizing or confirming any grant of land or the right to any land in the said Northern Pacific Railroad Company, or as waiving, or in anywise affecting any right on the part of the United States against the said Northern Pacific Railroad Company to claim a forfeiture of any land grant heretofore made to said company, is contained in the Senate amendment. That provision of the Senate amendment relating to indemnity to said road for mineral land, which is apparently in conflict with the spirit of the said reservation of the right to forfeit the grant, is to be stricken out by the adoption of this report.

THO. C. McRAE.
W. R. ELLIS.

On Thursday, the 21st of February, the report of the conference committee came up in the House for final action, and after the Speaker had notified the parties interested that he would not entertain a motion to add any other State to benefit by its provisions, it only remained to demand the previous question and pass the act. This was done, as will be seen by referring to the Record of that day here given:

Mr. ELLIS, of Oregon. Mr. Speaker, I desire to call up the conference report on the bill (H. R. 3476) to provide for the examination and classification of certain mineral lands in the States of Montana and Idaho.

Mr. BRECKINRIDGE. Can I raise the question of consideration against that conference report?

The SPEAKER. The gentleman can. The Clerk will read the statement and then the gentleman can raise the question of consideration.

The Clerk read as heretofore.

Mr. ELLIS, of Oregon. Mr. Speaker, I move the adoption of the report, and upon that I demand the previous question.

Mr. SAYERS. I would like to have some explanation in regard to this report. It seems to me to be a very important matter.

The SPEAKER. The explanation has just been read.

Mr. BRECKINRIDGE. I would like to know from the gentleman how long it will occupy before I relinquish the opportunity of raising the question of consideration.

The SPEAKER. The gentleman demands the previous question. The question is on the demand for the previous question.

Mr. BRECKINRIDGE. I will not raise the question of consideration.

The previous question was ordered.

The SPEAKER. The question is on agreeing to the report.

Mr. SAYERS. Mr. Speaker, I trust that the gentleman will make some explanation in addition to the statement that has been read. One of the conferees, I understand, has refused to sign this report, and the House ought to know what they are doing.

The SPEAKER. The gentleman can be heard in reference to the report of the committee of conference. There are fifteen minutes for debate on either side.

Mr. SAYERS. I ask the gentleman from California to make an explanation.

(Mr. CAMINETTI addressed the House. His remarks will appear hereafter.)

Mr. HERRMAN. I merely wish to add to what has been said by the gentleman from California that the Legislative Assembly of Oregon, within the last few days, has sent a memorial here in favor of the classification of lands in that State upon the same basis as those of Montana and Idaho.

The SPEAKER. The gentleman from Montana (Mr. Hartman) is recognized for five minutes.

Mr. HARTMAN. Mr. Speaker, the career of this bill has been a checkered one. It ran the gauntlet of the House; it came under the scrutinizing eyes of the Chairman of the Committee on Appropriations, the gentleman from Texas (Mr. Sayers), and is here now, after leaving the conference committee, appropriating less money than when it passed the House on the 23d day of last July.

Mr. SAYERS. I am not complaining of the bill.

Mr. HARTMAN. I know the gentleman has not complained of it; and I am glad he does not. It passed the Senate with amendments and went to the conference. It there had a stormy time between the five members of the conference committee and the gentleman from California (Mr. CAMINETTI).

This bill contains the result of five long years of hard work on the part of the Representatives and Senators from Montana and Idaho. It represents $30,000 in cash spent by our people to pay our mineral land commissioner in the last six years. It represents untold effort on the part of the present Representatives on this floor and of the Senators in the other end of the Capitol. It is the most important piece of legislation for the people of Montana and Idaho that has ever been enacted by the American Congress. It meets the unqualified approval of the Land Office of the Interior Department and the entire Legislatures of Idaho and Montana, including the Governors and State officers.

The gentleman from California (Mr. Caminetti) had exactly the same opportunity that I had to procure this legislation for his people; and the Public Lands Committee is here ready to listen to his cause, and if he presents a good one—and I hope he has a good one—I shall be very glad to assist him with every power that I have to secure the legislation for his people. I have no resentment against him in that regard; but I do not believe that the gentleman from California has any right to come here at this day and hour and say to me and to this House, "If I cannot get California provided for—California that has not been taken care of as you have taken care of Montana and Idaho in the bill—the bill itself shall go down to defeat." I do not believe that Congress is going to do anything of that kind.

A moment further, Mr. Speaker, and I will yield the floor. This conference report has been adopted in the Senate and the conferees discharged. The chairman of the conference committee of the House, the honorable chairman of the Public Lands Committee (Mr. McRae) has been called to his home in Arkansas, to the bedside of a sick daughter, and can not be here to participate in any further conferences; and therefore voting down this report is to defeat the bill entirely. If the gentleman from California wants to assume that responsibility it is for himself and he understands what it means.

Mr. CAMINETTI. I said expressly in the conclusion of my remarks that I was not here to antagonize the bill of the gentleman from Montana. But it was understood in the committee that I should be permitted to present the facts on behalf of California, so that the case on which we base our claim for action of this kind in regard to California might be before the House. The remarks of the gentleman, therefore, that I am against the bill, are entirely out of place.

Mr. HARTMAN. I am very glad to hear that. I misunderstood the gentleman and withdraw any remark that I made as to his opposition to the measure.

The SPEAKER. The question is on agreeing to the report of the conference committee.

The report was agreed to.

On motion of Mr. Ellis, of Oregon, a motion to reconsider the last vote was laid on the table.

At the solicitation of Mr. Hartman, the mineral land bill was enrolled by the clerk of the committee, and on Washington's birthday, which happened to be the birthday of your commissioner, it was sent to the President for signature.

There was much congratulation between the Congressional delegates and other Montanians temporarily sojourning in Washington because of its value to the people of the State in that, among others, the efforts of a hitherto dominant corporation to illegally obtain title to the most valuable public lands in the world had been thwarted.

This contest, as it developed, clearly showed that the people of Montana never had a full comprehension of what railroad aggression in this direction really meant. In the four years allowed by law in which to complete the examination and classification, the nine commissioners representing the three Montana land districts will have to pass upon upwards of 9,000,000 acres of unclassified lands. If they perform their duties conscientiously, as contemplated by law, four years is ample time, in my judgment; but if I should prove mistaken in this, the work will have so far progressed that it will be easy to get any necessary extension.

A valuable purpose of this bill which has never been lost sight of by those having it in charge, is that it will to a very great extent relieve the mining industry of the State from the perpetual annoyance of the sentimental forestry "crank." Under the law permitting the cutting of timber upon the mineral lands for the purposes of mining and manufacturing and for domestic uses, it will only be necessary to go before the commissioners of the district and show its mineral character, thus saving the necessity of complying with the very perplexing rules of the Interior Department, besides saving the expense required by frequent trips to Washington, and that of paid representation before the department. Another beneficial effect of this law seems to me will be to destroy the monopoly that the Northern Pacific Railroad Company, within its grant, has been able to confer upon favorites, to the exclusion of competition, in reference to cutting timber and transporting the same over its lines within the State. Our law will enable outsiders in many cases to have the land declared mineral, thus placing them on a plane with those who have been heretofore especially favored. Then, with a State law preventing discrimination and rebates by the railroads of the State in purely domestic business, it seems to me all parties will be placed on an equal footing.

This law is the crystallization of the efforts of the Mineral Land Association of Montana, two Governors, three Legislatures, two delegates in Congress, two members of Congress, four Senators and two mineral land commissioners, and has involved an expenditure by the State of Montana of the sum of $23,300. It can be made a great blessing to the people of the State, because in the prosperity of our mines is involved almost the entire material progress of the State. The lands to be examined and classified doubtless contain many times more valuable mineral than has ever been discovered, and in their bosoms slumber the foundation of a mighty empire. The resources are there which in the future are to make and maintain Montana's fame through the world as the "Great Treasure State." At the same time an efficient administration of the law can and will nullify every effort heretofore made to achieve this splendid desideratum. The appointment of incompetent commissioners, because of mental or physical incapacity, will result in destroying the efficacy of all of its provisions. Every portion of this law contemplates the physical examination of all of the lands involved, by legal subdivisions, by commissioners who know what are mineral lands when they see them. They must climb mountains and critically examine their geological formation with reference to their mineral character on every 40 acres of odd-numbered sections of surveyed land. After doing this they are to critically examine the unsurveyed lands, and wherever they ascertain any tract to be mineral, they are to set it off by metes and bounds.

By the nature of the work their examinations are almost entirely confined to eight months of the year, and during those months the work is going to be extremely arduous and calculated to try the physical endurance of the several commissioners. Their duties are of a new kind, with but few precedents for any part of their performance, therefore a certain amount of brains will have to be added to physical capacity. Temptations may be thrown in their way because of the wealth involved in the work they have to perform. Therefore integrity of purpose in the commissioner should be one of his highest qualifications. None should be appointed to positions under this law who do not appreciate the responsibility involved in the execution of the office, and who do not readily acknowledge what is due to the people of this State, and those who are to come after us. The pay is inadequate, but $6 a day and keep can be saved from the compensation allowed by this law; and I doubt not if the commissioners faithfully perform their duties the first season, by the result of their work and by proper report thereof, the department will recommend and Congress provide additional compensation and better allowances for the years that are to follow. The appointments are for four years at the will of the President, or during good behavior, and will be made by him, presumably from among his own party.

All of the Representatives of Montana and Idaho tried to retain the provision in the original bill for a non-political commission in each of the districts, but political greed compelled us to yield it or endanger the passage of the act. We don't doubt that there is as good material in one party as another, but a non-partisan commission would almost certainly last through the whole term of their appointment, while a political commission would have nothing especially to recommend its tenure if the national administration should change in politics—something not in the remote probabilities.

Our delegation tried hard to secure the naming of two commissioners for each of the land districts interested, but had to yield this to the politicians who hoped to secure the appointment of outside political pensioners. We were only able to secure one resident of each district. Therefore, it behooves those gentlemen having charge of the destinies of the Democratic party in Montana to bestir themselves to get resident men appointed suitable to perform for the people of Montana the very exacting duties required by the mineral land law. The fortunes of political domination have made them, to a great degree, responsible to the people for the honest and capable execution of this great trust, and their action in this matter will be watched by their fellow-citizens with a jealous eye.

There is a responsibility attending the having, to any extent, charge of legislation before Congress, that is calculated to make the individual something of a student of human nature. He is liable to have his eyes opened to the peculiar business methods of Congress in dealing with great questions. In propositions like ours the attitude of the department under whose jurisdiction the administration of any law enacted by Congress is almost all important. Senators who belong to the party in power are bound in fetters to the support of any administration plan. Bills coming into either House of Congress when referred to the proper committees are always sent by such committees to the head of the proper department for examination and report. His report, in almost every instance, decides the fate of the bill, because, in the House in particular, the committee, when its majority belongs to the administration party, rarely ventures to run counter to the secretary's recommendation.

In the Senate, where no rule exists for closing debate, agreement of a half dozen Senators can prevent action on any bill if obstinately fought, and they frequently do it by apparent friendly inquiries as to its provisions, professing all the time to be favorable to some legislation looking to the accomplishing of the desired end, but doubting as to whether the bill under consideration goes far enough in the direction intended. This is always done in the most solicitous terms, and all opposition is manifested with the deepest regret. You are told that your bill should be enacted into law, and if it should fail the present session, its merits will compel its enactment the next; all opposition is sugar-coated.

The lobby is an important function in the enactment of laws affecting private or corporate interests. The railroads of the country keep a large corps of trained, experienced agents at the Capital. These men are generally ex-members of Congress or others who by reason of former government employment have a large and favorable acquaintance with Senators, Representatives and public men generally. The ex-members have the privileges of the floor of the House of Representatives, which permits them to its freedom during the session The attention with which Senators and members listen to these people astonish one. Communication between the Congressman and the lobbyist is held openly and without shame. Upon the pending of the happening of an important event the corridors of the Capitol fairly swarm with this obsequious but pertinacious individual. Illustrative of this, when our bill was pending before the Committee on Public Lands and its fate was trembling in the balance, the corridor in front of the committee room was thronged with strange faces, whom I afterward learned were sub-agents of the lobby, head clerks of local railroad attorneys, occasionally a chief lobbyist, and sometimes an attorney of note. This was so pronounced that Senator Pettigrew stated in the committee that he had been called out and solicited in the matter, and had seen other Senators called out, he doubted not, for the same purpose. He further stated that it was disgraceful and ought to be abated.

Mr. John Boyd, an old resident of Washington, who started in as an assistant doorkeeper with very humble duties to perform, is now a prominent citizen, a deacon in high standing in his church, is the king of the lobby. His salary is stated at $25,000, and his pocket money at $40,000 per annum. He is rich, gives largely to charity and is much admired in Washington. He especially represents the Southern Pacific system, and is so entrenched in this position that he don't at all times solicit, but in fact frequently demands. He once sent us word that we must modify our attitude in a certain particular. We returned our compliments and requested that he confine himself to his own business. Towards the last, when we think he saw he could do nothing, he became very friendly.

Life in Washington is expensive, and a person gets rid of money without knowing where it goes. I have examined my accounts and find that my expenditures for two years are approximately as follows:

Legal expenses	$1,750.00
Traveling expenses	988.00
Personal expenses	1,839.47
Sundry incidental	722.53
Total	$5,300.00

I have filed expense accounts and vouchers for the same, but I have not attempted to file for the full amount of money I have expended in this service. To successfully engineer any measure before Congress, one can spend more

money in a legitimate way than any State would like to authorize. Therefore, a person has got to exercise a guarded restraint, and yet you are in a measure asking favors, and you cannot be niggardly. You must keep up your end with the average Congressman while you are in his company, and he spends all of his salary and mileage every year.

A chronicle of the long struggle that terminated in a wise and beneficent law would not be complete if it did not include some names that were entitled to particular mention on account of their activity in bringing about the result achieved. To give them all would require too much space, but especially the State owes much to Dr. A. H. Mitchell, the last president of the State Mineral Land Association; Thomas G. Merrill, its secretary and executive officer; to H. L. Frank, author of the law creating the State Bureau of Mineral Lands, and Major Martin Maginnis, its first commissioner; to W. W. Dixon, Esq., the author of the first mineral land bill; to ex-Senator Sanders for his efforts in its behalf; to Honorable Thomas H. Carter, the Montana commissioner of the General Land Office; to Hon. Lawrence Maxwell, solicitor-general of the United States, who assisted Mr. Dixon before the Supreme Court in the Barden case; to ex-Governor Hauser, of Montana, and ex-Governor Stephenson, of Idaho, who were present and assisted in the last stages of the passage of the bill; to Speaker Hon. Charles Crisp, who at all times gave us encouragement, and a hearing whenever desired; to Chairman Senator Berry and Chairman Congressman McRae, of the respective Public Lands Committees; to Senators Shoup and Dubois, and Congressman Sweet, of Idaho, who, although not so greatly interested as our delegation, worked unceasingly to the good end; to Congressman Hartman and Senator Power, who in their respective Houses bore the brunt of the fight; to Senator Mantle, who was the first president of the Mineral Land Association, and who as a representative of Montana was in his place in the Senate in time to shape satisfactorily the final amendments; to Governor John E. Rickards, whose steadfast support was a great factor in determining the attitude of Senators and Congressman; to Governor McConnell, of Idaho, who infused into his Legislature the steam enginery of his enthusiasm in behalf of the law; to the timely action of the Chamber of Commerce of the City of Butte; to the Legislatures of the several States of Montana, Idaho and Oregon for their resolutions and memorials; and finally to that mightiest of all engines for good or evil, the Public Press of Montana.

In concluding this history of a bill, and necessarily an account of my own stewardship as a special commissioner to perform a specific office, I am glad to be able to report the full fruition of every hope I entertained when I accepted the employment of the State at the hands of its Governor. My duties have been performed to the best of my ability. My office has expired by limitation, and I surrender its duties with satisfaction and great relief.

Respectfuly submitted,

GEO. W. IRVIN,
State Mineral Land Commissioner.

(Public—No. 76.)

An Act to privide for the examination and classification of certain mineral lands in the States of Montana and Idaho.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and is hereby, authorized and directed, as spedily as practicable, to cause all lands within the land districts hereinafter named in the States of Montana and Idaho within the land grant and indemnity land grant limits of the Northern Pacific Railroad Company, as defined by an act of Congress entitled "An Act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget Sound, on the Pacific coast, by the Northern route," approved July second, eighteen hundred and sixty-four, and Acts supplemental to and amendatory thereof, to be examined and classified by commissioners to be appointed as hereinafter provided, with special reference to the mineral or non-mineral character of such lands, and to reject, cancel and disallow any and all claims or filings heretofore made, or which may hereafter be made, by or on behalf of the said Northern Pacific Railroad Company on any lands in said land districts which upon examination shall be classified as provided in this act as mineral lands.

Sec. 2. That for the purpose of making the examination herein provided for there shall be appointed by the President of the United States, as soon as practicable after the passage of this act, three commissioners for each of the following land districts, to-wit: The Bozeman, Helena and Missoula land districts, in the State of Montana, and the Coeur d'Alene land district, in the State of Idaho, at least one of whom for each district shall be a practical miner and a resident of such district; and said persons so appointed for each district shall constitute a board of commissioners to perform within such district the duties herein prescribed. They shall each receive for their compensation ten dollars for each day they may be actually engaged in the performance of their duties, which shall include their transportation and subsistence expenses, but the total amount of compensation to be paid to each commissioner annually shall in no case exceed the sum of twenty-five hundred dollars; and their accounts shall be audited by the Secretary of the Interior and paid monthly. Before entering upon their duties each of said commissioners shall take an oath to faithfuly perform the duties of his office. Said commissioners shall make examination of the lands herein mentioned within their respective districts, and may also take the testimony of witnesses as to the mineral or non-mineral character of any of said lands, and receive any other evidence relating to said matter, and shall have power to summon witnesses to appear before them and to administer oaths; and they shall, immediately upon their appointment, procede to examine and classify the lands herein mentioned within their respective districts, as provided in this act, and shall fully complete said classification within the term of four years from the date of this act. The oath of office of said commissioners shall be filed by them in the office of the Commissioner of the General Land Office. All testimony taken by said commissioners shall be reduced to writing, subscribed by the witnesses, and filed with the report of the commisioners hereinafter required. The action or decision of a majority of said commissioners in each district shall control in all matters herein provided for. That the commissioners shall perform the work of examination and classification herein directed according to such rules and regulations as the Secretary of the Interior shall prescribe.

Sec. 3. That all said lands shall be classified as mineral which by reason of valuable mineral deposits are open to exploration, occupation and purchase under the provisions of the United States mining laws, and the commissioners in making the classification hereinafter provided for shall take into consideration the mineral discovered or developed on or adjacent to such land, and the geological formation of all lands to be examined and classified, or the lands adjacent thereto, and the reasonable probabilities of such land containing valuable mineral deposits because of its said formation, location or character. The classification herein provided for shall be by each legal subdivision where the lands have been surveyed. If the lands examined are not surveyed, classification shall be made by tracts of such extent, and designated by such natural or artificial boundaries to identify them, as the commissioners may determine. Where mining locations have been heretofore made or patents issued for mining ground in any section of land, this shall be taken as prima facie evidence that the forty-acre subdivision within which it is located is mineral land: Provided, That the word "mineral," where it occurs in this act, shall not be held to include iron or coal: And provided further, That the examination and classification of lands hereby authorized shall be made without reference or regard to any previous examination or report or classification thereof.

Sec. 4. That such of the lands herein mentioned as have been surveyed prior to the passage of this act shall be first examined and classified as herein provided, and afterwards, and as speedily as practicable, the lands herein mentioned which have not been surveyed, until all the lands herein mentioned shall have been examined and classified, as herein provided.

Sec. 5. That said commissioners shall, on or before the 5th day of each month, file in the office of the register and receiver of the land office of the land district in which the land examined and classified is situated a full report, in duplicate, in such form as the Secretary of the Interior may prescribe, showing all lands examined by them during the preceding month, and specifying clearly, by legal subdivisions, where the land is surveyed, or otherwise by natural objects or permanent monuments, to identify the same, the lands classified by them as mineral lands and those classified as non-mineral; and with said report shall be filed all testimony taken and written communications received by said commissioners relating to the lands embraced in the report. The register and receiver shall file one duplicate of said report in their office, together with all accompanying testimony and papers, and the other duplicate shall be by them forwarded direct to the Secretary of the Interior, and said commissioners shall furnish to the Secretary of the Interior at any time such further or additional report or information as he may require concerning any matters relating to their duties or the performance of the same. Upon receipt of such report the register of the land office shall, at the expense of the United States, cause to be published in a newspaper of general circulation in the county in which the land is located, and in one newspaper published at the capital city of the State in which the lands may be situated, at least once a week for four consecutive weeks, notice of the classification of lands as shown by said report, and any person, corporation or company feeling aggrieved by such classification may, at any time within sixty days after the first publication of said notice, file with the register and receiver of the land office a verified protest against the acceptance of said classification, which protest shall set forth in concise language the grounds of objection to the classification as to the particular land in said protest described, whereupon a hearing shall be ordered by, and conducted before, the said register and receiver, under rules and regulations as near as practicable in conformity with the rules and prac-

tice of such land office in contests involving the mineral or non-mineral character of the land in other cases; and an appeal from the decision of the register and receiver shall be allowed to the Commissioner of the General Land Office and the Secretary of the Interior, under such rules and regulations as the Secretary of the Interior may prescribe: Provided, That at such hearings the United States shall be represented and defended by the United States district attorney or his assistants for the judicial district in which the land is situated, unless the Secretary of the Interior shall detail some proper officer of the Department of the Interior for that purpose. The compensation for such service shall not exceed ten dollars per day for each day's actual service before the register and receiver, to be paid out of the fund provided for the examination and classification of said mineral lands.

Sec. 6. That as to the lands against the classification whereof no protest shall have been filed as hereinbefore provided, the classification, when approved by the Secretary of the Interior, shall be considered final except in case of fraud, and all plats and records of the local and general land offices shall be made to conform to such classification. All lands so classified as above without protest and the classification whereof is disapproved by the Secretary of the Interior, and all lands whereof the classification has been invalidated for fraud, shall be subject to hearing and determination in such manner as the Secretary of the Interior may prescribe. And as to all such lands, and as to the lands against the classification whereof protests may be filed, the final ruling made after the day set for hearing shall determine the proper classification; and all records of the local and general land offices shall be made to conform to the classification as determined by such final ruling, and all costs of such hearing shall be paid by the unsuccessful party, under such rules as the Secretary of the Interior may prescribe, and the Secretary of the Interior is hereby authorized to establish such rules and regulations as may be necessary to carry into effect the true intent and provisions of this act as speedily as practicable.

Sec. 7. That no patent or other evidence of title shall be issued or delivered to said Northern Pacific Railroad Company for any land in said land districts until such land shall have been examined and classified as non-mineral, as provided for in this act, and such patent or other evidence of title shall only issue then to such land, if any, in said land districts as said company may be, by law and compliance therewith and by the said classification, entitled to, and any patent, certificate, or record of selection or other evidence of title or right to possession of any land in said land districts, issued, entered or delivered to said Northern Pacific Railroad Company, in violation of the provisions of this act shall be void: Provided, That nothing contained in this act shall be taken or construed as recognizing or confirming any grant of land or the right to any land in the said Northern Pacific Railroad Company, or as waiving or in any wise affecting any right on the part of the United States against the said Northern Pacific Railroad Company to claim a forfeiture of any land grant heretofore made to said company.

Sec. 8. That there is hereby appropriated, out of any money in the Treasury not other wise appropriated, the sum of twenty thousand dollars, or so much thereof as may be necessary, to be expended to carry into effect the provisions of this act, the same to be paid out upon the order of the Secretary of the Interior; and the Secretary of the Interior is hereby required to embrace in the annual estimates submitted to Congress for appropriations for the Interior Department a sufficient sum to pay the said commissioners for the fiscal year next ensuing, and annually thereafter until the classification of lands required by this act has been fully accomplished.

Aproved, February 26, 1895.